

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.693 of 2019

and

C.M.P.No.4526 of 2019

1.Easwaramoorthy
2.E.Palaniammal
3.E. Prakash
4.E. Govindaraju
5.E.Shanmuga Sundaram ...Petitioners/Appellants/Petitioners

Vs

1.Mohana
2.Sathyamoorthy
3.Radhamani
4.Rajeshwari
5.Muthusamy
6.Mahendran
7.Parvathy
8.Nachimuthu
9.Rajeshwari
10.Easwaran
11.Thangaraj ...Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and Decretal order dated 26.07.2018 in I.A.No.957 of 2017 in A.S.No.50 of 2013 on the file of the learned I Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.K. Govi Ganesan

ORDER

The above Civil Revision Petition is filed challenging the order of the learned I Additional Sub Judge, Coimbatore, dismissing the application filed by the revision petitioner for appointment of an Advocate Commissioner to inspect the suit property and to file a report noting down the physical features along with photographs.

2.The reasons for seeking appointment of an Advocate Commissioner has been stated in Para 3 of the affidavit filed in support of the revision petition which reads as follows:

"The Lower Court comes to a conclusion that the plaintiffs have failed to prove that the common pathway runs even in the common place to prove the existence of the pathway within the common property, the commissioner's report is absolutely

necessary. A commissioner report with plan noting down the physical features along with the photographer of the suit property will be of very much helpful to come to correct conclusion in the appeal."

3. Before traversing into the order under Revision, it is necessary to state the facts of the case. The revision petitioner had filed a suit O.S.No.203 of 2008 on the file of the learned District Munsif, Palladam, for declaring the defendants, their men, agents, relatives, friends and everyone on their behalf from in any way interfering with the peaceful possession, use and enjoyment of the suit property by the revision petitioner by passing a permanent injunction against the defendants and restraining the defendants, their men, agents, relatives, friends and everyone on their behalf in any way interfering with the peaceful possession, use and enjoyment of the suit property by passing a permanent injunction against the defendants.

4.The suit property was described as a common pathway measuring 17 feet width x 698 ft. length East West starting from the North – South Karumathampatti Road, till the end of the lands in Survey Field No.267/2. The plaintiffs had claimed their right on the basis of purchase as well as on the basis of being the legal representatives of the original owner Karuppa Gounder and a Will dated 27.03.2003 apart from the revenue records. The suit was dismissed by a Judgment dated 13.10.2011 wherein the learned District Munsif has held that the plaintiff had not proved the enjoyment of the common cart track beyond the layout and also held that there was an alternate pathway to reach the property of the plaintiffs. Challenging the said Judgment and Decree, the revision petitioners have filed A.S.No.50 of 2013 on the file of the learned Subordinate Judge, Coimbatore. Pending the appeal, the impugned petition has been filed. The same was objected by the respondents stating that it is belated one and an attempt to fill up the *lacunae*. The learned I Additional Subordinate Judge, by order dated 26.07.2018 has dismissed the

said application. Challenging the same, the revision petitioners are before this Court.

5.Mr.K.Govi Ganesan, learned counsel appearing for the petitioners would contend that the appointment of an Advocate Commissioner is very essential since the existence of the common cart track can be noted down and this exercise is only to clarify the existence of the cart track and therefore, the order dismissing the said application was erroneous.

6.Heard the learned counsel appearing for the petitioners and perused the material available on record.

7.A perusal of the Judgment in O.S.No.203 of 2008, would reveal that an earlier application was taken out by the respondents/defendants seeking appointment of an Advocate Commissioner to show the existence of an alternate pathway to reach the suit property and the same was dismissed on the

objections of the revision petitioners and further, the only reason that has been put forward for seeking appointment of an Advocate Commissioner which has been narrated supra, is nothing but an attempt to fill up the *lacunae*. The revision petitioners have to prove their right and use of such pathway independently. The learned Judge has rightly dismissed the said application. There is no infirmity in the order passed by the learned I Additional Subordinate Judge, Coimbatore.

This Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.02.2019

Index : Yes/No

Internet : Yes/No

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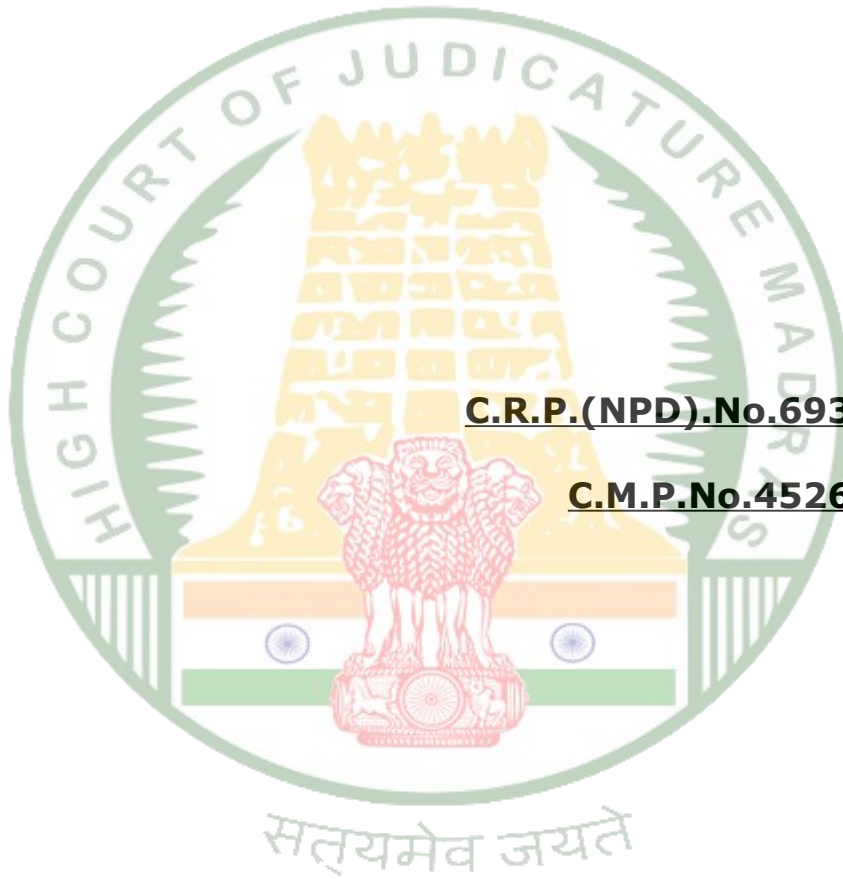
To

The I Additional Subordinate Judge,
Coimbatore.

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P.T. ASHA, J,

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