

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.1627 of 2015

and M.P.No.1 of 2015

1.Chinnappa Gounder
2.Thangavel

.. Petitioners

vs.

1.Chennimalai
2.Viswanathan
3.Anbuselvi
4.Preetha

.. Respondents

Prayer.: Civil Revision petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 06.11.2014 made in I.A.No.861 of 2014 in O.S.No.563 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Paramathi.

For Petitioners : Mr. P.Vallippan

For Respondents : No Appearance

ORDER

The present Civil Revision Petition has been filed to set aside the fair and decretal order dated 06.11.2014 passed by the District Munsif cum Judicial Magistrate Court, Paramathi in I.A.No.861 of 2014 in O.S.No.563 of 2014.

2. By the impugned order dated 6.11.2014, the court has dismissed I.A No.861 of 2014 filed by the petitioners under Order 26 Rule 9 of CPC for appointment of an Advocate Commissioner to inspect and give a report regarding the vehicle path/ card tracks.

3. The petitioners are the plaintiffs in O.S.No.563 of 2004 before the District Munsif cum Judicial Magistrate Court, Paramathi. The suit was filed for permanent injunction, mandatory injunction and for a declaration. After the suit was filed and the trial commenced and the 2nd petitioner was examined as P.W.1, the petitioners have filed I.A.No.861 of 2014.

4. The petitioners averred that they came to know that a well about 10 feet away from the cart track was being dug up by the respondents. The 3rd respondent stated that a well was already pre-existing.

5. The respondents filed their objection wherein they have denied obliterating of the cart track and digging a well and stated that an application for appointment of an Advocate Commissioner cannot be permitted after the trial commenced and that the exercise was intended to collect the evidence which is permissible.

6. The application was dismissed by the trial Court. It was concluded that though the petitioners disputed about the presence of the well (which is about 10 feet away from the cart track) yet they failed to explain as to how it would affect the present case.

7. Though notice has been served on the respondents, there is no representation on behalf of the respondents. The petitioners have obtained interim stay of the proceeding by an order dated 24.04.2014. The limited stay granted was not however extended.

8. The learned counsel for the petitioners submitted that the suit is pending and in view of the pendency of this petition and prays for allowing the present civil revision petition.

9. I have considered the averments and the arguments advanced by the learned counsel for the petitioners and also perused the documents available on records.

10. The suit is of the year 2004 and the trial has commenced after the written statement filed and at that stage in the year 2014 (i.e. on 18.10.2014) the petitioners filed the application Order 26 Rule 9 of C.P.C. for appointment of an advocate commissioner.

11. The only reason given by the learned District Munsif is that the suit has been pending for 10 years and the trial has commenced and the intention of the petitioners in filing the application was for collecting the evidence. The respondents have stated that well enisled much earlier and there was no cart truck and therefore the application was filed only with an intention to drag on the proceedings after the trial commenced.

12. Had the lower court allowed the application for appointment of an Advocate Commissioner then and there it would have established the physical features of suit schedule property as on that date.

13. Now another four years have lapsed since dismissal of the application during the pendency of the present civil revision petition. The lower court has not proceeded for the with the suit in view of the interim order granted by this court staying further proceedings before it.

14. No Prejudice would have been caused if the application was allowed then and there by the lower Court. It is not clear whether appointment of an Advocate Commissioner to undertake the exercise at this point of time would help the petitioners to show establish the physical feature of the land albeit the cart path as on the date of application and prior to institution of the suit.

15. Be that, as it may, the petitioners deserve a fair chance though the application was filed belatedly. I am therefore inclined to allow the application subject to payment of cost, since the application for appointment of an Advocate Commissioner was filed in the year 2014 long after after the commencement of the trial in the suit filed in the year 2004. The petitioners should therefore pay a cost to the respondents for the delay.

16. Accordingly, the petitioners are directed to pay a sum of Rs.5000/- to the credit of the above suit, within a period of 4 weeks from date of receipt of this order as cost. On such deposit, the respondents shall be entitled to withdraw the aforesaid amount. The court shall thereafter appoint an Advocate Commissioner to inspect the property described in Application No 861 of 2014 and to give a report in a time bound manner.

17. The District Munsif cum Judicial Magistrate, Paramathi shall thereafter proceed to pass a judgment and decree within a period of 9 months from date of receipt of this order. I

18. It is made clear that all expenses in connection with the appointment of an Advocate Commissioner shall be borne by the petitioners. In

C.SARAVANAN,J.

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case the petitioners succeed in the suit, same shall be recovered from the respondents.

19. The above Civil Revision Petition stands allowed with the above observation. Consequently, connected miscellaneous petition is closed.

24.06.2019

Index :Yes/No
Internet :Yes/No
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To
The District Munsif cum Judicial Magistrate,
Paramathi.

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