

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.02.2019**

CORAM:

THE HONOURABLE Mr.**JUSTICE N.SATHISH KUMAR**

C.R.P.(PD) No.3555 of 2013

and

MP.No.1 of 2013

1. Kandayee
2. Varudhayee
3. Arukkani
4. Pavayee
5. Susila

...Petitioners

versus

1. M.Ramasamy
2. M.Sathiyamoorthy

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 26.07.2013 passed in I.A.No.638 of 2013 in O.S.No.98 of 2010 on the file of Additional District Munsif Court, Tiruchengode.

For Petitioner : Mr.D.Shivakumar

For Respondents : M/s.N.Manoharan

ORDER

This Civil Revision Petition has been filed against the order of the trial court dismissing the application filed to appoint an advocate Commissioner to note down the physical feature of the property. The application has been taken down by the defendant. The suit has been filed for mandatory injunction to remove the obstruction allegedly caused in the common cart track.

2. Further, it is alleged by the plaintiff that the obstruction in the cart track was made on 02.11.2009, whereas it is the contention of the respondent/defendant that though the cart track was shown in the partition deed, the plaintiffs never used it and the cart track is not in existence at present. For the last 40 years, it was never used by the plaintiff. Further, the plaintiff has also purchased another property and there is an alternative path way available to the suit property. The defendants have filed an application for appointment of advocate Commissioner. The Court below dismissed the application on the ground that since there is no dispute with regard to the cart track provided in the partition deed, the Commissioner cannot be appointed to gather evidence.

3. The learned counsel for the revision petitioners/defendants submitted that admittedly, the main allegation of the plaintiffs is that only in the year 2009, there was obstruction made by the defendants, whereas, the defendants submitted that the cart track was never used, though it was provided in the partition deed.

4. It is to be noted that the extinguishment of right of the property must be independently proved by the parties by evidence. The cart track and right to use the same as given in the partition deed is not in dispute. Therefore, the commissioner cannot be appointed to gather evidence. Further, no purpose would be served if the commissioner is appointed after long passage of time.

The allegation of the plaintiff clearly indicates that the cart track was converted in

the year 2009. If the Commissioner is appointed now certainly there would not be any purpose. Therefore, it would never help the parties or court to decide the issue on the basis of the report by the Commissioner, which is to be filed after 10 years of the suit.

5. Therefore, this Court is of the view that there is no requirement arising in this case for appointment of advocate commissioner. This Civil Revision Petition is dismissed. However, considering the circumstances of this case, the trial Court is directed to dispose of the suit, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Index:Yes/No

Speaking/Non-speaking Order

kmi

To
The Additional District Munsif,
Tiruchengode.

13.02.2019

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N.SATHISH KUMAR, J.

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