

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP PD No.4202 of 2013 and
M.P.No.1 of 2013

1. Annamalai
2. Pongiannan ... Petitioners

Vs.

Chinnasamy ... Respondent

Prayer : Civil Revision Petition filed under Section 227 of the Constitution of India against the orders dated 25.09.2012 passed in I.A.No.410 of 2012 in O.S.No.130 of 2009 by the District Munsif Cum Judicial magistrate, Pramathy.

For Revision Petitioners : Mr. S.Mukunth
for M/s Sarvabhauman Associates

For Respondent : No appearance

ORDER

Aggrieved over the orders passed by the trial court, dismissing application filed for appointment of advocate commissioner, the present revision petition has been filed.

2. The revision petitioners are the defendants in the original suit in O.S.No.130 of 2009. The plaintiff has filed the said suit for declaration of the sale deed dated 26.08.2009, standing in the name of 1st defendant is null and void and permanent injunction against the defendants. Pending suit, the defendants have filed an application for appointment of advocate commissioner to note down the physical features of the suit property. That application was resisted by the plaintiff on the ground that the application had been filed belatedly. However, the trial court dismissed the application holding that parties cannot be allowed to gather evidence by way of appointment of an advocate commissioner. Against which the present revision petition has been filed.

3. The learned counsel appearing for the revision petitioners/defendants would contend that the appointment of advocate commissioner was sought only to note down the physical features of the property and not for gathering evidence. Admittedly, the dispute revolves only around the existence of pathway and hence, by appointing advocate commissioner, no prejudice would be caused to anybody.

4. No representation on the side of the respondent, despite his name is printed in the cause list.

5. I have perused the materials. The suit has been filed to declare the sale deed dated 26.08.2009 executed in favour of the 1st defendant is null and void. It is the contention of the plaintiff in his pleadings that the cart track was leading to survey No.217/1, 2,3 and the defendants cannot claim any right over the said cart track on the basis of the sale deed dated 26.08.2009. Whereas, the contention of the defendants that the cart track has been existing for more than 30 years and the same has been enjoying by the respective co-owners.

6. The trial court dismissed the application mainly on the ground that the parties cannot be permitted to gather evidence. It is to be noted that the existence of cart track in the dispute land is admitted. Whether the cart track is leading to both side can be seen only by physically. Therefore, the report of the advocate commissioner noting down the physical features of the property would enable the court to arrive at a correct conclusion and to decide the lis between the parties. Though the suit has been filed for annulment of the document, the dispute is with regard to the existence of the cart track and its usage by the parties. Therefore, the trial court has erred in dismissing the application for appointment of advocate commissioner and the same is liable to be set aside.

7. In the result,

- (i) The Civil Revision Petition is allowed. No costs. The connected civil miscellaneous petition is closed.
- (ii) The orders passed by the trial court is set aside.

(iii) The trial court is directed to the appoint an advocate commissioner to note down the physical features of the suit property, within a period of two weeks from the date of receipt of a copy of this order and dispose the suit within six months from the date of appointment of advocate commissioner.

15.03.2019

Index : yes/no
Internet : yes/no
Speaking order/non-speaking order
mst

To

The District Munsif Cum Judicial Magistrate, Paramathy.



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N.SATHISH KUMAR. J.,
mst



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