

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD)No.4286 of 2013
and M.P.No.1 of 2013

1.Chinna Gounder
2.Chandrasekar

..

Petitioners

versus

1.Kandasamy
2.Periasamy

..

Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and final order dated 21.06.2013 made in I.A.No.174 of 2013 in O.S.No.211 of 2007 on the file of the learned Principal District Munsif, Tiruchengode.

For Petitioners : M/s.Zeenath Begum
For Respondents : Mr.N.Manoharan

ORDER

This Civil Revision Petition has been filed against the order dated 21.06.2013 made in I.A.No.174 of 2013 in O.S.No.211 of 2007 on the file of the learned Principal District Munsif, Tiruchengode.

2. The Interlocutory Application in I.A.No.174 of 2013 was filed by the petitioners, under Order 26 Rule 9 r/w Section 151 of the Code of Civil Procedure, seeking an order to appoint an Advocate Commissioner to note down the physical features of the suit property.

3. The suit has been laid for permanent injunction in respect of the pathway. It is the case of the defendants that, the pathway is not used by the plaintiffs, there is alternate pathway very much available, this pathway is absolutely belongs to the defendants and during the course of cross examination, they have produced the photographs, which were denied by the defendants and at this stage, this application came to be filed. The trial Court has dismissed the application on the ground that the pathway can be proved through both oral and documentary evidence, as against which, the present Revision came to be filed by the petitioners herein.

4. The learned counsel appearing for the revision petitioners submitted that the suit has been filed on the basis of patta Nos.445 and 995 and the main contention is that, the suit cart-track is the only pathway to reach their lands.

5. The learned counsel appearing for the respondents submitted that the Commissioner cannot be appointed in all matters to note down the physical features of the suit property, the reason is, in each case the facts and circumstances are different and each case has to be decided based upon their own facts and circumstances. Further submitted that appointing Commissioner would amounts to gathering evidence and that cannot be permissible under law.

6. Heard the learned counsel appearing for the revision petitioners as well as the learned counsel appearing for the respondents and also perused the documents available on record.

7. Admittedly, the parties are claiming their rights only based on pattas issued by the Government. The specific case of the plaintiffs is that except the pathway there is no other pathway to reach their lands whereas, the defendants submitted that the pathway absolutely belonged to them. Therefore, this Court is of the view that the appointment of Commissioner is absolutely necessary in this case to note down the physical features of the pathway and that would not prejudice to the respondents.

8. Accordingly, the order of the trial Court dated 21.06.2013 passed in I.A.No.174 of 2013 in O.S.No.211 of 2007 dismissing the application to appoint the Commissioner is hereby set aside. The trial Court shall appoint Advocate Commissioner and direct him to file a report along with photographs, within a period of two months from the date of receipt of a copy of this order and thereafter, dispose of the suit within a period of four months.

9. With these observations, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

27.02.2019

Speaking Order/Non Speaking Order
Index : Yes / No
Internet : Yes

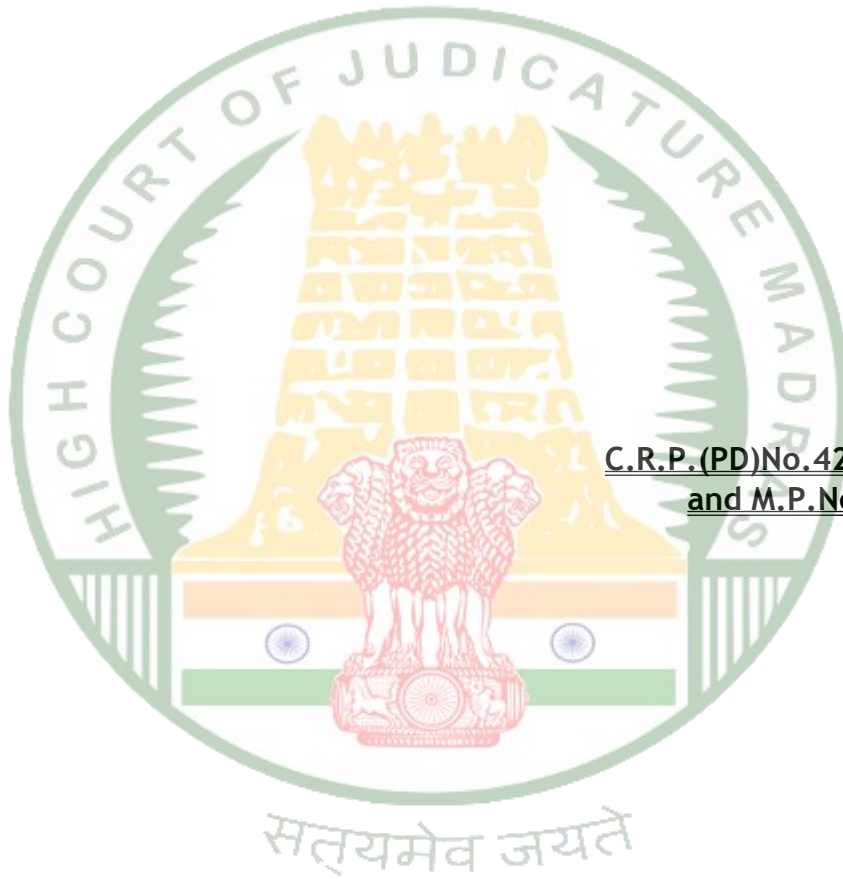
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To

The Principal District Munsif,
Tiruchengode.

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N.SATHISH KUMAR, J.,
sri



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