

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:13.02.2019

Delivered on:11.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)No.2197 of 2018

&

C.M.P.No.13855 of 2018

1.Devendiran

2.Jayaprakash

3.Baskar

4.Senthil Kumar

...Petitioners

R.Sekar

...Respondent

Vs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 29.06.2018 in I.A.No.584 of 2017 in O.S.No.1448 of 2017 on the file of the Additional District Munsif Court, Thiruvannamalai.

For Petitioners : Mr.R.Subramanian
for Mr.S.Govindraman

For Respondent : Mr.B.Jawahar

ORDER

The defendants are the revision petitioners before this Court. The Civil Revision Petition is filed challenging the order passed in I.A.No.584 of 2017 in O.S.No.1448 of 2017 by the Additional District Munsif, Thiruvannamalai, appointing an Advocate Commissioner to measure the suit A, B and C schedule properties, Demarcate boundaries and to note down the physical features thereof. The brief facts which are necessary for disposing of the above Civil Revision Petition are as follows:

2.The respondent herein had filed the suit O.S.No.1448 of 2017 on the file of the Additional District Munsif, Thiruvannamalai for a declaration that the plaintiff is entitled to a 1/6th right to the C-Schedule pathway which right was an easement of necessity and for an injunction restraining the defendants from obstructing the usage of this path way by the plaintiff. It is the case of the plaintiff that the suit A, B and C- Schedule properties were purchased by his father Rayar Naidu under various sale deeds from the year 1945. In the year 2003, namely on 12.11.2003, Rayar Naidu had partitioned the suit schedule

properties and had retained the C-Schedule properties which consist of a well, Service Connection, pump sets and pathway in common to all his six sons. The plaintiff was allotted A-Schedule property and the defendant B-Schedule property the C-Schedule pathway was situate on the boundary of the A-Schedule and the start of the B-Schedule property. From the date of the settlement, the plaintiff and his sons have been using this pathway to take their Cars, Tractors and Lorries to the fields.

3.It is the case of the plaintiff that the 1st defendant who is none other than his brother and defendants 2 to 4 who are the sons of the 1st defendant were attempting to obstruct his usage of the said pathway and had put up a wall. Even in the plaint, the plaintiff had reserved his right to file an application for the appointment of an Advocate Commissioner. Pending the suit, the 1st defendant had executed settlement deed in favour of his sons.

4.The plaintiff had taken out I.A.No.584 of 2017 for appointing an Advocate Commissioner to visit the suit property accompanied by qualified surveyor, measure the A, B and C-Schedule properties and

demarcate boundaries and also to note down the physical features of the schedule of properties.

5.The defendants had filed a written statement contending that there was no pathway in existence and that the plaintiff had an alternative pathway and had opposed the appointment of the Advocate Commissioner. They would contend that even as early as in the year 2007 the well, the Well bund and channels were subdivided and patta No.4034 was issued in the name of the ten persons, the said lands were comprised in D.S.No.201/3E and measured an extent of 0.02.50 Hects. The defendant/revision petitioner had also taken out plea that the sale deed executed by the father did not mention about the existence of the pathway.

6.The learned Additional District Munsif, Thiruvannamalai, after a detailed enquiry allowed the application and directed the Advocate Commissioner to note down the physical features of the suit schedule properties, measure the A, B and C-Schedule properties with the help of the revenue records and to submit a detailed report. The learned Judge had directed the Advocate Commissioner to take assistance of a

qualified Surveyor from the Village Administrative Officer. It is this order that is the subject matter of the challenge before this Court.

7. Heard Mr.R.Subramanian, learned counsel for Mr.S.Govindraman. The learned counsel would submit that the appointment of an Advocate Commissioner was only a guise for collecting evidence and time and again this Court has deprecated this practice. He would also contend that the pathway in question was not in existence and further the settlement deeds under which the plaintiff would claim a right does not mention about the said pathway. He would further contend that the plaintiff was trying to drag on the proceedings. He also contend that the plaintiff by filing such an application was seeking to expand the right granted under settlement deed.

8. Per contra, Mr.B.Jawahar, learned counsel appearing for the sole respondent would contend that the plaintiff was basing his claim on the settlement deed executed in his favour by his father and on the ground that this was the only pathway to reach the A-Schedule properties and the appointment of the Advocate Commissioner was

only to assist the Court.

9. Heard both sides and perused the papers. It is seen that the plaintiff/respondent has come forward with a case that there is a pathway in existence running across the boundary of the A-Schedule property and continuing to the start of the B-Schedule property. The pathway was kept in common along with other items of common enjoyment like well, pump sets, service connection etc.,

10. It is also seen that the plaint is filed on 10.03.2017. The plaintiff has reserved his right to take out such an application. The revision petitioners/defendants have come forward with a case that there is no pathway in existence on site and that the settlement deed executed by the father Rayar Naidu did not provide for the pathway. However on a perusal of the settlement deeds executed on 12.11.2003 by Rayar Naidu in favour of the 1st petitioner and the respondent herein talks about the customary pathway apart from the well, service connection etc.,

11. Therefore considering the fact that the defendants have come

forward with a case that the pathway is not in existence, it would be helpful for the Court to visualise the suit properties, the lie of the land, mode of enjoyment etc., which would go a long way in helping the Court arrive at decision. This assumes significance since the plaintiff would contend that there is a pathway and the settlement deed would support the plea but the defendant categorically denies the very existence of the pathway.

I find no infirmity in the order passed by the learned Additional District Munsif, Thiruvannamalai in I.A.No.584 of 2017 in O.S.No.1448 of 2017 and the Civil Revision Petition therefore stand dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

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Index : Yes/No
Speaking order/non-speaking order

To,
The Additional District Munsif,
Thiruvannamalai.

11.03.2019

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P.T.ASHA, J.,

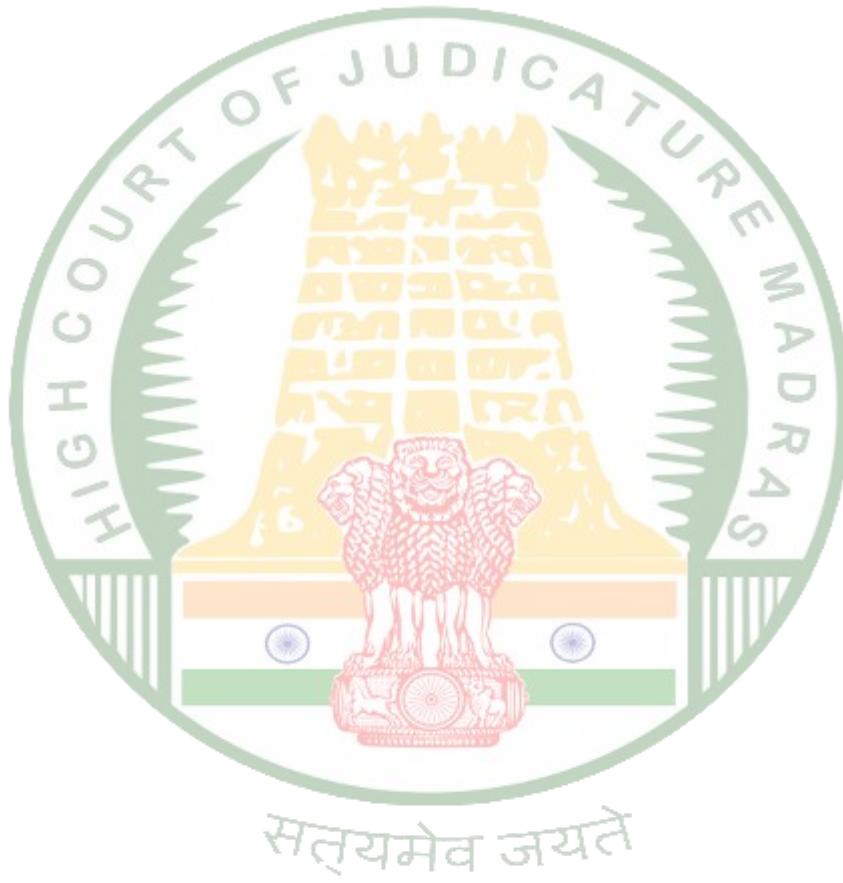
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