

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.(PD) No.3660 of 2019
and C.M.P.No.24027 of 2019

1.C.Ponnuvelu
2.P.Velavan

... Petitioners

-Vs-

1.S.Mani
2.Kulandaiyammal
3.Kaliyammal
4.Sitthan
5.Chinnasamy Allimuthu @ Duraisamy
6.Mangammal
7.Kaliyammal
8.Periyasamy
9.Pachiyammal
10.Kaliyammal
11.Mallika
12.Kandhan @ Kaliappan
13.Paanjalai

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 01.08.2019 made in I.A.No.279 of 2019 in O.S.No.153 of 2013 on the file of the Court of District Munsif, Dharmapuri.

For Petitioner : Mr.C.E.Pratap

O R D E R

This revision petition has been filed against the fair and decreetal order dated 01.08.2019 made in I.A.No.279 of 2019 in O.S.No.153 of 2013 on the file of the Court of District Munsif, Dharmapuri.

2. Before the Court below, the revision petitioners, who are the plaintiffs, filed the suit in O.S.No.153 of 2013 for declaration and injunction in respect of 'C' schedule property of the suit schedule. In the said suit, the present I.A., in I.A.No.279 of 2019 was filed to appoint an advocate commissioner with a task to visit the suit schedule property along with the surveyor as well as the Village Administrative Officer and to note down the physical features and file a report with a map.

The said application having been heard, was rejected by the Court below through the impugned order, as against which the present revision has been filed.

3. Heard Mr.C.E.Pratap, learned counsel for the revision petitioners / plaintiffs, who submits that the petitioners / plaintiffs traces the title of the suit property ie., the 'C' schedule property by way of a sale deed of the year 1976, whereas the defendants claim right over the property from an alleged sale of the year 1997. Therefore, the issue as to who is having title over the 'C' schedule property, is to be decided in the suit and the suit was laid with the said prayer.

4. In this context, learned counsel for the petitioners would further state that, in between the 'C' schedule property, there is a pathway, which is a common pathway being used as a pathway to the other schedule mentioned properties and that should be noted by the advocate commissioner and report to that effect should be filed before this Court, then only the Court can come to a conclusion as to who is having title over the 'C' Schedule property along with the pathway. Therefore, when such an application was filed to appoint the advocate commissioner for the aforesaid purpose, the same has not been considered in proper perspective and has been rejected erroneously by the learned Judge and therefore, the impugned order is liable to be interfered with.

5. I have considered the said submissions made by the learned counsel for the petitioners and also perused the materials placed before the Court.

6. I have perused the plaint with the cause of action part as well as the prayer and the schedule as stated above. The suit was laid by the petitioners / plaintiffs for declaration and injunction in respect of 'C' schedule property, which is a vacant land measuring 0.16 cents marked as 'F,G,H,I,F' and the four boundaries of the 'C' schedule property also has been given. Nowhere in the suit schedule, the alleged pathway, as has been alleged by the revision petitioners is mentioned and no prayer has been sought for in respect of the pathway.

7. When that being the position, the present I.A., has been filed, where the stand taken by the revision petitioner is, when there is a pathway which has been there long back and it has been utilised by the petitioners / plaintiffs also, in order to note down the existence of that pathway, it has become necessitated for them to seek for appointment of advocate commissioner.

8. If this application is allowed for the aforesaid purpose, it is nothing but introducing a new case now in the existing plaint, as if that the 'C' Schedule property, apart from the 0.16 cents land which was clearly earmarked in the schedule of the plaint itself, also includes a pathway. If at all the pathway is part and parcel of the 'C' schedule property or the plaintiffs have a right over the same, that should have been averred in the plaint and relief to that effect should have been asked for. When no such move has been made by the petitioners / plaintiffs, the present introduction of a new case that the pathway is also there along the said 'C' schedule property, cannot be permitted to be sustained as that will amount to allowing a new case, without a valid procedure.

9. If at all the petitioners feel that, the pathway is also part of the 'C' schedule property, proper course should be adopted so as to file an amendment petition to that effect and if such amendment petition is allowed on merits, then the petitioners can seek such remedy, without which the present remedy of appointment of advocate commissioner to note down the physical features of the land including the pathway, cannot be justified.

10. In that view of the matter, the impugned order does not require any interference from this Court. Accordingly, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

KST

To

The District Munsif, Dharmapuri

Copy to

The Section officer

VR Section

High Court, Madras 104.

+1 Cc to Mr.C.E.Pratap, Advocate sr 94434.

C.R.P. (NPD) No.3660 of 2019

MG (CO)

SP(20/03/2020)