



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.2161 of 2012 (PD)

and

M.P. (MD) .No.1 of 2012

WEB COPY

1.S.Ramesh

2.Reginal

...Petitioners/Petitioners 1&3/

Plaintiffs 1&3

Vs.

1.D.Justin

2.Manonmony

3.Lawrence

...Respondents 1 to 3/Respondents 1 to 3/

Defendants 1 to 3

4.Swornam @ Sowrnammal

...4th Respondent/2nd Petitioner/2nd

Plaintiff

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.828 of 2009 in O.S.No.202 of 2008, on the file of the Additional District Munsif, Padmanabhapuram, dated 19.11.2011.

For Petitioners

: Mr.M.P.Senthil

For R-1 to R-3

: Mr.R.Vijayakumar

For R-4

: No Appearance

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below dismissing the application filed by the petitioners / plaintiffs to scrap the report of the Advocate Commissioner dated 28.10.2008. The petitioners / plaintiffs have filed a suit against the respondents / defendants seeking for the relief of declaration of the easementary right of the pathway over plaint "B" schedule property and for permanent injunction. The respondents / plaintiffs filed their written statement.

2. The petitioners filed an application for appointment of an Advocate Commissioner to inspect the property and file a report along with the plan. The Court below appointed an Advocate Commissioner and the Advocate Commissioner inspected the property in the presence of the parties and their counsel and he had filed a detailed report on 28.10.2008 along with the plan.

3. The petitioners had certain reservations on the report and plan that was filed by the Advocate Commissioner. Therefore,



they filed their objections. The petitioners also filed an application for scrapping the entire report and plan filed by the Advocate Commissioner on the ground that the report of the Advocate Commissioner does not correctly reflect the state of affairs as it prevails in the property and that the Advocate Commissioner has suppressed the pathway that is available on the southern side of "B" schedule property in R.S.No.456 / 1.

4. The Advocate Commissioner was also put into the witness box and he was cross-examined by the petitioners by putting to him all the objections that were raised by the petitioners for the report of the Advocate Commissioner.

5. The Court below took into consideration the objections made by the petitioners and also the evidence adduced by the Advocate Commissioner and came to a categorical conclusion that there was no requirement to scrap the report and plan of the Advocate Commissioner and that it is for the petitioners to prove their right over the property through proper evidence and documents.

6. The learned counsel appearing for the petitioners submitted that the report and plan filed by the Advocate Commissioner intentionally stops with the existing pathway shown only up to CD point and actually, this pathway extends beyond the CD point shown in the plan. The learned counsel further submitted that this has been clearly brought out even in the evidence, when the Advocate Commissioner was cross-examined by the petitioners. The learned counsel submitted that the report of the Advocate Commissioner does not correctly reveal the actual state of affairs and therefore, this court can direct for the re-issuance of the warrant only to ascertain the availability of a pathway beyond CD Point. The learned counsel submitted that he will limit his relief to that extent and he does not want the entire report to be scrapped.

7. Per contra, Mr.R.Vijayakumar, learned counsel appearing on behalf of the respondents 1 to 3 submitted that the Court below has considered each and every one of the objection that was raised by the petitioners and the Court below has come to a categorical conclusion that the report and plan of the Advocate Commissioner need not be scrapped and it did not find any ground for re-issuance of the warrant. The learned counsel submitted that the petitioners will have to independently prove their easementary right and they cannot use the report of the Advocate Commissioner as an exclusive evidence in order to establish their right. The learned counsel submitted that there are no grounds to interfere with the order passed by the Court below and this Civil Revision Petition is liable to be dismissed.



8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The Advocate Commissioner came to be appointed in this case pursuant to the application filed by the petitioners/plaintiffs. The Advocate Commissioner has inspected the property in the presence of the parties and their respective counsel. The Advocate Commissioner has inspected the property with the help of a Surveyor. A report was filed along with the plan on 28.10.2008. The petitioners raised several objections and one primary objection that was raised by the petitioners is that the Advocate Commissioner has mentioned in his report as if the pathway stops with point CD and infact the pathway extends beyond point CD.

10. The Advocate Commissioner was examined and he has specifically stated that there is no pathway beyond point Cd.

11. It must be borne in mind that the Advocate Commissioner is not appointed by a Court for collecting evidence. A report and plan of an Advocate Commissioner at the best can only be a piece of evidence that will be considered by the Court along with the other evidence that is let in by the parties.

12. In this case, the petitioners have raised their objections to the report of the Advocate Commissioner and the Advocate Commissioner was also examined as a witness. A careful reading of the order passed by the Court below shows that the Court below has satisfied itself with the fact that the Advocate Commissioner has completed his work in accordance with the warrant that was issued by the Court below and there were no justifiable materials to scrap the report and plan of the Advocate Commissioner. For every objection that is raised by the parties, a report cannot be scrapped or a warrant cannot be re-issued, unless the Court is satisfied with such a requirement. Ultimately, a report of the Advocate Commissioner will only help the Court in coming to a just and fair conclusion in the case and it is always open to the Court to either accept the report wholly or partly or even reject the report of the Advocate Commissioner.

13. The attempt of the petitioners seems to be that they want to establish their case only based on the report of the Advocate Commissioner. The petitioners have approached the Court seeking for declaration to declare their easementary right over the pathway. Therefore, whether the Advocate Commissioner is appointed or not, it is the duty of the petitioners to independently establish their right by letting in oral and documentary evidence. The report of the Advocate Commissioner should be taken only as one piece of evidence by the Court below,



while finally deciding the case.

14. In the considered view of this Court, there is no illegality or infirmity in the order passed by the Court below and there are no grounds to interfere with the same. It is made clear that the Court below will independently assess the rights of the parties based on the entire evidence that is collected during the course of trial. The Court below will not be swayed merely by the report of the Advocate Commissioner and the report and plan of the Advocate Commissioner will only be taken as one piece of evidence to decide the case.

15. In the result, the fair and final order passed by the Court below in I.A.No.828 of 2009, dated 19.11.2011 is hereby sustained and this Civil Revision Petition stands dismissed. The Court below is directed to complete the proceedings in O.S.No.202 of 2008, within a period of three months from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1.The Additional District Munsif, Padmanabhapuram.

2.The Record Keeper,-2 copies

Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R. VIJAYAKUMAR, Advocate (SR-100175[F] dated 21/11/2019)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-100482[F] dated 22/11/2019)

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