



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.11.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (PD) (MD) No.960 of 2013

and M.P. (MD) No.1 of 2013

Vellaisamy

... Petitioner/Respondent/Plaintiff

Vs.

1.Kumaresan

2.Vadivel

... Respondents/Petitioners/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order and decreetal order dated 27.02.2013 passed in I.A.No.867 of 2011 in O.S.No.253 of 2011 on the file of the District Munsif, Pudukkottai.

For Petitioner : Mr.B.Jameel ARasu

For Respondents : Mr.R.Thiagarajan

O R D E R

This Civil Revision Petition is filed by the plaintiff challenging the order passed by the learned District Munsif, Pudukkottai in I.A.No.867 of 2011 in O.S.No.253 of 2011 on the file of the District Munsif, Pudukkottai in and by which the court below has appointed an Advocate Commissioner in a suit for bare injunction to identify the physical features with the help of the Surveyor and submit a detailed report.

2. The plaintiff's case in the suit was that the property in question is his ancestral property and they are in possession and enjoyment for several generations. Patta has already been granted to the plaintiff with reference to the suit property.

3. The defense to the said suit was that 5 cents out of the suit property was a public pathway which is the access for the defendants and others to reach the main road and that this pathway is in existence for several decades.

4. Pending the appeal, the defendants have come forward with the impugned application seeking to have an Advocate Commissioner appointed to note down the physical features of the property. In the affidavit filed in support of that application, the defendants would state that the plaintiff was only entitled to an extent of 0.02.0 ares as per the patta and that he is trying to extend his possession to further extent without any title and therefore, there was necessity to have an Advocate Commissioner appointed to note down



the physical features particularly that a portion of the suit property is a well formed pathway.

5. Though the plaintiff had refuted this allegation in the said petition, the learned District Munsif, Pudukkottai, has proceeded to allow the said application.

6. A reading of the order impugned would clearly show that there has been a total non-application of mind by the learned District Munsif since the order is a non speaking one. The learned District Munsif, Pudukkottai, has simply allowed the application on the ground that the appointment of an Advocate Commissioner was imperative for noting down whether there is a pathway in the suit property or not. In effect, the learned District Munsif was trying to gather evidence for the defense.

7. It is an axiomatic principle of law that in a suit for bare injunction appointment of Advocate Commissioner should be made only in the rarest of rare cases. The Advocate Commissioner's report cannot be used to substitute the evidence of any one party. In the instant case, it is the defense that the portion of the suit property is a pathway and the order would clearly indicate that the Advocate Commissioner is being appointed to note down the existence of this pathway. The impugned order is perverse and suffers from infirmity and the same is set aside.

8. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

CM

To

The District Munsif, Pudukkottai.

+1CC TO MR.P.THAGARAJAN, Advocate Sr. No.96838

+1CC TO MR.B.JAMEEL ARASU, Advocate Sr. No. 96588

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SCR(CO)

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