



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2019

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P (MD) No.1078 of 2019

and

C.M.P (MD) No.5875 of 2019

Paulraj

.. Petitioner/
Appellant

Vs.

1.Selvaraj

2.Ganapathi

3.Rengaraj

4.Ramasamy

.. Respondents/
Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.02.2019 made in I.A.No.201 of 2018 in A.S.No.71 of 2016 by the Sub Court, Thuraiyur.

For petitioner

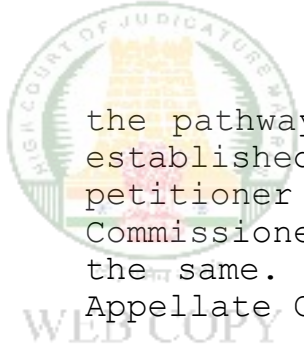
: Mr.K.Prabhakar

ORDER

Against the dismissal of petition to appoint Advocate Commissioner, this revision has been filed.

2.The petitioner / plaintiff filed O.S.No.515 of 2004 for the reliefs of declaration and permanent injunction in respect of the suit pathway. The Trial Court dismissed the suit, against which, the petitioner / plaintiff filed A.S.No.71 of 2016. Pending appeal, the petitioner / plaintiff filed I.A.No.201 of 2018 seeking to appoint an Advocate Commissioner to note down the physical features of the suit pathway and to file his report and plan. The Appellate Court has dismissed the same, against which, the present civil revision petition has been filed.

3.The learned counsel for the petitioner / plaintiff would submit that before the Trial Court, the respondents / defendants have not raised any objection with regard to the existence of suit pathway. But, the trial Court dismissed the suit on the ground that



the pathway has not been pinpointed and its existence has not been established. Therefore, in order to substantiate his claim, the petitioner / plaintiff filed the petition to appoint Advocate Commissioner. But, the Appellate Court has erroneously dismissed the same. Thus, he prayed to set aside the order passed by the Appellate Court.

4. Heard the learned counsel for the petitioner / plaintiff and perused the materials available on record.

5. Perusal of records would show that the petitioner / plaintiff filed the suit for the relief of declaration to declare that the suit pathway belongs to the petitioner / plaintiff as well as one Maheswaran. The Trial Court dismissed the suit. The petitioner / plaintiff filed the commission petition before the Court below to note down the physical features of the suit pathway. The existence of suit pathway has been admitted on the side of the respondents / defendants. But, they pleaded that the suit pathway is a common pathway. The petitioner / plaintiff pleaded that the suit pathway exclusively belongs to him and one Maheswaran. Therefore, the petitioner / plaintiff has to adduce oral and documentary evidence to substantiate his claim that he and one Maheswaran are having exclusive right over the suit pathway. The learned Judge after considering the above, has rightly dismissed the petition, which in my considered opinion, requires no interference at the hands of this Court. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Sub Judge, Thuraiyur.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.PRABHAKAR, Advocate SR-73685.

ORDER MADE IN
C.R.P (MD) No.1078 of 2019
05.07.2019