



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2019

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP(MD).No.291 of 2019(PD)

and

C.M.P. (MD).No.1404 of 2019

P.Muthu Lakshmi

... Petitioner

Vs.

P.Rameshwari

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.11.2018 made in I.A.No.747 of 2018 in O.S.No.178 of 2015 on the file of the District Munsif Court, Madurai.

For Petitioner : No appearance
For Respondent : Mr.J.Prabakaran

O R D E R

This Civil Revision Petition has been preferred by the petitioner, who is the plaintiff in the suit, against the fair and decreetal order dated 13.11.2018 passed in I.A.No.747 of 2018 in O.S.No.178 of 2015 by the District Munsif Court, Madurai.

2.The said I.A.No.747 of 2018 has been preferred by the plaintiff for examining the Tahsildar before the trial Court. In the said petition, the plaintiff contended that both the plaintiff and the defendant are having lands in Survey Nos.84/7 and 85/4A respectively and there is a regular pathway in the said two survey numbers. The existence of the said pathway is found in the revenue records. The plaintiff has filed the said I.A., to examine the Tahsildar for the purpose of existence of the pathway, which is in usage and right of both the parties.

3.The respondent herein, who is the defendant, has filed a counter statement stating that the suit property is wrongly described in the plaint and the petitioner/plaintiff is not entitled to enjoy the road portion on the south of her eastern portion of the plot No.17. It is also contended that already the suit was referred to Lok Adalat on 08.09.2018. When the case was posted on 08.09.2018, there was no settlement arrived at between the parties, due to the non-appearance of the plaintiff before the Lok Adalat. Hence, the defendant is that the plaintiff has no right or title over the road portion, which is left for the purpose of common usage and also the plaintiff is preventing the defendant from



removing the Margosa Trees, which is an obstacle for his ingress and egress to the vacant site, which is owned by the defendant in Plot No.57.

4. The trial Court, after observing the contention raised by both sides and also the plaint, has analyzed the fact that the pathway is being used by both the plaintiff and the defendant and whose properties lies in Survey No.84/7 and Survey No.85/4A respectively, and hence, the petitioner sought for a relief that the Tahsildar has to be examined before the Court to prove the existence of the pathway and the usage of the same by the adjacent owners of the said survey numbers. For granting the relief sought for by the plaintiff in the suit for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property, the description of the property as stated by the plaintiff in the plaint, has to be quoted in the said order. The trial Court has also perused the evidence that is deposed by the plaintiff during the trial. Based on the admission of the plaintiff that the pathway, which measures 200 sq.ft., is not enough for exclusive usage of the plaintiff, the trial Court observed that the purpose of sending the documents ie., 'A' Register, especially, to prove the existence of the Survey No.84/7 and 85/4A and the examination of the Tahsildar for the said purpose, is not of any usage. The petitioner/plaintiff in the said petition has also sought for production of revenue papers including Field Measurement Book and other related documents. The trial Court has also considered the relief sought by the plaintiff for sending the documents and the revenue records to show that the existence of the Survey numbers and also the pathway. The trial Court has also observed that if there is any discrepancy in the description of the property by uploading the revenue records, only then, the opportunity will arise for the examination of the said Tahsildar and in that view, the trial Court dismissed the said petition. Aggrieved against the said order, the plaintiff has preferred the present Civil Revision Petition.

5. In the grounds, the petitioner has stated that "the trial Court had failed to appreciate the contentions of the petitioner that the revenue records regarding the disputed extent of the survey number would bring light the truth, as to the exact extent prior to and after the subdivision of the suit property, which will prevent multiplicity of proceedings and never ending litigation."

6. On a perusal of the order of the trial Court, it is observed that the trial Court has no objection for sending the documents pertaining to the said survey numbers, in which, both the parties have their rights and also the sub-division details and only if there is a discrepancy with regard to the pathway in the said revenue records and the sale deed of the defendant, the witness can be summoned and examined. The said order of the trial Court seems to be very much reasonable when the documents regarding the measurement of the plaintiff and the defendant property and the subdivision and



the existence of the pathway can very well be observed by the production of the said document. The petitioner/plaintiff is no way aggrieved the said order, because he has his own documents and in which, the measurements are also very well stated.

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7. When the matter came up for hearing today, there is no representation on behalf of the petitioner/plaintiff and the learned counsel appearing for the respondent/defendant is present. The respondent/defendant also argued that the pathway, which the plaintiff claims exclusive right is not the one that he could claim such a right, whereas the defendant has a right in the said pathway.

8. It is seen that the petitioner/plaintiff was given liberty by the trial Court for sending the revenue records to assess the existence of the pathway and the concerned survey number, in which, their properties lie in the said survey number and such liberty is sufficient for assessing the pathway that was disputed by the petitioner/plaintiff. If necessary, the trial Court can consider the application and there is no requirement for the petitioner/plaintiff to examine the Tahsildar to prove such existence or the right of the parties.

9. In view of the above, the order passed in I.A.No.747 of 2018 by the trial Court does not require any interference. Hence, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal District Judge,
Kanyakumari,
Nagercoil.

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

+1 CC to M/s.J.PRABAKARAN, Advocate SR-48240[F] dated 19/02/2019

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