

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P.PD.No.341 of 2020

and

CMP.No.1784 of 2020

Kailasam

... Petitioner

Vs.

1. Balasubramanian

2. Swaminathan

3. M.P.Sarveswaran

4. Thiruvalluvan

5. The State of Tamil Nadu
rep. by the District Collector,
Namakkal Collectorate,
Nallipalayam Post, Namakkal Taluk.

6. The District Revenue Officer,
Namakkal, Collectorate,
Nallipalayam Post, Namakkal Taluk

... Respondents

Prayer :- This Civil revision has been filed under Article 227 of the Constitution of India to allow the Civil Revision Petition setting aside the fair and decreetal order of the learned Principal District Munsif, Namakkal dated 15.11.2019 in I.A.No.2 of 2019 in O.S.No.255 of 2017.

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioner's application to appoint Advocate Commissioner to measure the property with the help of surveyor and also produce the rough sketch, which is available before UDR scheme and after UDR scheme. Now challenging the same, the present revision has been filed.

2. Heard the learned counsel for the petitioner and perused the materials available on records

3. The petitioner/plaintiff has filed a suit in O.S.No.255 of 2017 for declaration to declare the right to use the suit pathway and for permanent injunction restraining the defendants from using the said pathway and also for mandatory injunction to restore the pathway and further declaration that he is entitled to use the suit pathway to reach the South-North road. The petitioner /plaintiff claiming right over the Will said to have been executed by one Kamatchiammal, wherein, the suit cart track has been shown as the first and second items of the schedule of the

Will and also another sale deed dated 07.11.1950, wherein, the disputed pathway has been mentioned. According the petitioner, now the respondents 5 to 10 are obstructing the petitioner to use the pathway and also trying to put up constructions. In the above circumstances, the present application has been filed to measure the property with the help of a surveyor with the sketch available before UDR and after UDR. The above application has been contested by the fourth defendant stating that the disputed pathway does not belong to the petitioner and the Government has already put up constructions over the same and hence, there is no cart track available as on date. Hence, there is no purpose for appointment of the Advocate Commissioner to measure the pathway, which is not available as on date. The trial Court thoroughly considering the entire materials available on records, dismissed the application holding that there is no necessity to appoint the advocate Commissioner and if at all the petitioner is claiming any right over the pathway, he has to prove the same through oral and documentary evidence and he cannot try to collect the evidence through the Advocate Commissioner . That apart, now the suit is posted for trial and at this stage, the petitioner filed this application only to drag on the proceedings. I

have gone through the entire materials. I find no illegality or irregularity in the order passed by the Court below and I find no merit the revision.

4. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

31.01.2020

mrp

Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

To

1. The Principal District Munsif, Namakkal

2. The State of Tamil Nadu
rep. by the District Collector,
Namakkal Collectorate,
Nallipalayam Post, Namakkal Taluk.

3. The District Revenue Officer,
Namakkal, Collectorate,
Nallipalayam Post, Namakkal Taluk

V.BHARATHIDASAN, J.,

mrp



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