

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P (PD).No.1814 of 2015

and

M.P.No.1 of 2015

(Through Video Conferencing)

Selvam

S/o.Sellappan

... Petitioner

Vs.

1. Kulandapaiyan

S/o.Semban

2. Andiappan

S/o.Sithan

3. Andiappan

S/o.Semban

4. Easwaran

S/o.Ramasamy

5. Balakrishnan

S/o.Chinnusamy

6. Selvaraj

S/o.Chinnusamy

7. Kalaiamuthan

S/o.Gopal

... Respondents

Prayer: Civil Revision petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 29.01.2015 in I.A.No.1302 of 2012 in O.S.No.298 of 2011 on the file of the District Munsif Court at Mettur.

For Petitioner : Ms.Shivani
for Mr.S.M.S.Shriram Narayanan
For Respondents : Mr.R.Subramanian
Senior Counsel

ORDER

This Civil Revision Petition has been filed by the respondents/defendants against the order passed in I.A.No.1302 of 2012 in O.S.No.298 of 2011 on the file of the District Munsif Court at Mettur, dated 29.01.2015.

2. The petitioner/plaintiff herein had filed a suit in O.S.No.298 of 2011 on the file of District Munsif Court, Mettur to declare that he is the absolute owner of the suit cart track, consequential relief of permanent injunction restraining the defendants therein from in any way laying a new cart track in his property situated in Survey No.51/3, to declare that he is having right of cart track in B-Schedule Property and also to restrain the defendants therein by way of permanent injunction from in any way obliterating and preventing usage of the suit cart track in B-Schedule Property to reach the A-Schedule Property. He also filed an application in I.A.No.1302 of 2011, to appoint an Advocate Commissioner to note down the existence of the suit cart track.

3. The Trial Court has appointed an Advocate Commissioner to note down the physical features and existence of the suit cart track. The Advocate Commissioner also inspected the suit property and filed Interim Report on 15.12.2011. Thereafter, The respondents/defendants had filed an application in I.A.No.1302 of 2012 to re-issue the commission warrant to the same Advocate Commissioner to measure the properties with the help of a qualified surveyor and Village Administrative Officer by referring to the revenue records and file a report a with plan. The learned District Munsif, Mettur by the order dated 29.01.2015 had allowed the said application. Feeling aggrieved, the respondents/defendants have filed the present Civil Revision Petition.

4. Heard, Ms.Shivani, learned counsel for the petitioner and Mr.R.Subramanian, learned Senior Counsel for the respondents.

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5. The learned counsel for the petitioner has submitted that in the written statement filed by the respondents/defendants have categorically admitted the existence of suit cart track but took a plea that the

petitioner/plaintiff alone is not having exclusive right over the same and in such a case, the respondents/defendants can prove their case by producing documentary evidence that they are also having right to use the said suit cart track and instead of that, they cannot file a petition to re-issue the commission warrant. She further submitted that already the Advocate Commissioner has inspected the suit property and at that time, the respondents/defendants also present in the suit property and when the Advocate Commissioner made an attempt to serve notice, they refused to take notice, however, they were present during inspection and hence there was no necessity to re-issue the commission warrant. She further submitted that only with a view to drag on the proceedings, the respondents/defendants had filed the petition to re-issue the commission warrant and without taking into consideration of the aforesaid facts, the trial Court had allowed the said application which was filed by the respondents/defendants to re-issue the commission warrant and therefore she prays to allow this Civil Revision Petition and set aside the order passed by the trial Court and dismiss the application in I.A.No.1302 of 2012.

6. Per contra, Mr.R.Subramanian, learned senior counsel for the respondents/defendants has submitted that the Advocate Commissioner was appointed at the instance of the petitioner herein before the respondents/defendants entered appearance and the said commissioner has filed only an Interim Report and in such a case, the trial Court should have directed the Advocate Commissioner to file a final report and instead of that, it has closed the said petition. He further submitted that in order to show that the suit cart track runs up to the defendants land and also the said suit cart track runs only in Poramboke land and the same is being maintained by the Government, the properties have to be measured with the help of a qualified surveyor and Village Administrative Officer, with reference to the revenue records and hence, the respondents/defendants have filed an application in I.A.No.1302 of 2012 to re-issue the commission warrant. He further submitted that the trial Court taking into consideration of the aforesaid facts had rightly allowed the said application and in the said order, this Court need not interfere. Therefore, he prays to dismiss the Civil Revision Petition.

7. A perusal of the typed set of papers filed by the petitioner/plaintiff would show that he filed the suit in O.S.No.298 of 2011, claiming exclusive right over the suit cart track. The respondents/defendants had filed written statement contending that they are also having right over the suit cart track and in fact, the said cart track runs in odai poramboke. It is also seen that, on the date of filing of the suit itself, the petitioner had filed an application in I.A.No.1302 of 2011, to appoint an Advocate Commissioner to note down the existence of suit cart track and accordingly, the Advocate Commissioner was appointed and the Advocate Commissioner also had inspected the suit property and filed an Interim Report on 15.12.2011, but along with the said report, he returned the warrant also. In such a case, the trial Court should have directed the Advocate Commissioner, to file a final report but it has closed the said Advocate Commissioner's application. Subsequently, the respondents/defendants had filed an application in I.A.No.1302 of 2012, to re-issue the commission warrant to the same Advocate Commissioner to inspect the suit property in the presence of their counsel and the suit property has to be measured with the help of a qualified surveyor and

Village Administrative Officer with reference to the revenue records and then only, the Court will have an opportunity to see whether the suit cart track runs in a patta land or in a poramboke land.

8. The Trial Court taking into consideration, the respondents/defendants claimed that the suit cart track runs in S.No.51/3 (Odai Poramboke), in order to locate the same and also relying upon the decision of this Court reported in **2013 (2) MWN (Civil) 619 (V.Ganesan Vs Kamal Jain)** allowed the said application. This Court does not find any irregularity or illegality in the said order. Hence, this Civil Revision Petition is liable to be dismissed.

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

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Index : Yes/No

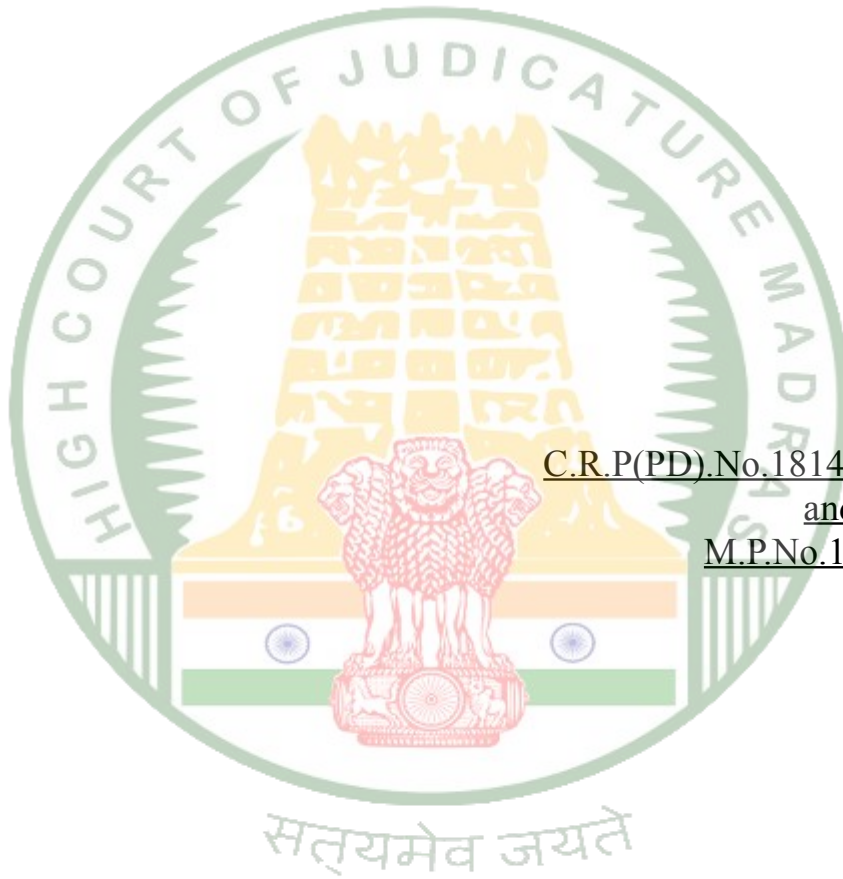
Internet : Yes / No

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P.RAJAMANICKAM, J.

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To
The District Munsif Court,
Mettur.



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