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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.4368 of 2013  
and  
MP.No.1 of 2013

Davayee Ammal ... Petitioner/Plaintiff/Petitioner

Versus

1. The Project Head,  
L & T Krishnagiri,  
Thoppur, Toll Road,  
Toll Plaza, Kurinchi Nagar Palayam,  
Dokkupothan Halli Village,  
Dharmapuri Taluk and District.

2. The Project Director,  
National Highways Authority of India,  
Narasthipatti,  
Salem.

... Respondents/Defendants/Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 07.10.2013 made in I.A.No.938 of 2013 in O.S.No.196 of 2009 on the file of the District Munsif Court, Dharmapuri.

For petitioner : Mr.R.Karthikeyan  
For Respondents: Mr.S.Jaganathan,  
Government Advocate.

ORDER

This Civil Revision Petition has been filed against the order dated 07.10.2013 made in I.A.No.938 of 2013 in O.S.No.196 of 2009 on the file of the District Munsif Court, Dharmapuri.

2.The plaintiff is the revision petitioner herein. The plaintiff filed the suit for a bare injunction to restrain the defendants and their men in any way by any means, including building of compound wall obstructing the plaintiff's ingress and egress to the National Highways Road from every point of the suit property. Pending suit, the petitioner filed an application in I.A.No.938 of 2013 in O.S.No.196 of 2009 under



Order XXVI and Rule 9 of CPC and Section 151 of CPC., for appointment of an Advocate Commissioner to note down the physical features of the suit land with the assistance of the Revenue Officials, especially to note down the ongoing construction of wall put up and completed, with the result, the petitioner has no other alternative pathway or route from her property to reach the National Highways.

3. Pending suit, the second defendant/second respondent herein was impleaded in the suit and the Plaintiff, as PW.1, has also entered into the witness box. Thereafter, the petitioner herein has filed I.A.No.938 of 2013 under Order XXVI and Rule 9 of CPC and Section 151 of CPC., for appointment of an Advocate Commissioner as stated supra. The said application was dismissed. Hence, the present Civil Revision Petition.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

5. The prayer in the suit filed before the Trial Court is for a bare injunction against the defendants and the pleading that the plaintiff has no alternative pathway or ingress or egress to exit from the suit property and the only route to reach the National Highways has been blocked by the respondents, cannot be proved by the plaintiff by oral or documentary evidence and therefore, she sought for appointment of the Advocate Commissioner to carry out a local inspection to note down the physical features of the suit property to show that she has no other alternative route for ingress and egress. However, reasons assigned by the Trial Court that in a suit for bare injunction appointment of Advocate Commissioner cannot be permitted is unsustainable in law. The Petitioner did not attempt to prove her possession over the suit property, but to note down the other physical features surrounding the property namely compound wall put up by the respondent blocking her ingress and egress and the absence of any other alternative pathway to reach the National Highway. Furthermore, the contention raised in the counter of the respondents is that the petitioner/plaintiff is having an alternative pathway to reach the National Highway. It was also stated that there is another alternative pathway available to the petitioner to reach the National Highway. This was disputed by the petitioner/plaintiff. Thus, this Court is of the view that the Trial Court has committed an error in not properly appreciating the factual position of the case.

6. In the result, the order dated 07.10.2013 passed in I.A.No.938 of 2013 in O.S. No. 196 of 2009 is set aside and this Civil revision petition is allowed and the Trial Court is directed to dispose of the application in I.A. No. 938 of 2013,



within a period of twelve weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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s/d-  
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

klt

To

1.The District Munsif Court, Dharmapuri.

2.The Project Head,  
L & T Krishnagiri,  
Thoppur, Toll Road,  
Toll Plaza, Kurinchi Nagar Palayam,  
Dokkupothan Halli Village,  
Dharmapuri Taluk and District.

3.The Project Director,  
National Highways Authority of India,  
Narasthipatti,  
Salem.

+1 CC to Mr.R.Karthikeyan, Advocate sr 14582.

+1 CC to Govt. Pleader sr 14759.

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and  
MP.No.1 of 2013

VBA (CO)  
SP (14/07/2020)