

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 2486 of 2018

and

C.M.P.No. 15242 of 2018

M.Vinayagam

...Petitioner

Vs.

1.M.Govindaraj
2.P.Thandapani
3.Elumalai
4.P.Gopal

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the petition and order dated 07.07.2018 made in I.A.No. 273 of 2017 in O.S.No. 82 of 2017 on the file of the District Munsif, Katpadi, Vellore District.

For Petitioner : Mr.V.Karthikeyan

For Respondents : Mr.T.M.Hariharan for R4

Mr.Ravichandran Sundaresan for

R1 to R3

ORDER

The plaintiff in O.S.No. 82 of 2017 has come up with this revision. Challenge in this revision is to the order dismissing an application of the petitioner seeking appointment of Commissioner to measure the property with the help of a Taluk Surveyor, Katpadi Tahsildhar, Firka Surveyor and Village Administrative Officer as per the documents filed along with the plaint and to fix the boundaries for the suit mentioned properties.

2. The suit is one for permanent injunction restraining the defendants from preventing the plaintiff to use the suit Item 4 as a pathway to reach his properties in suit Items 1 to 3. The suit is resisted by the defendants contending that the plaintiff is not the owner of the suit Item 1 and that the suit 4th Item is not a pathway meant for the plaintiff to reach suit items 1 to 3. The claim of the plaintiff that the suit Item 4 in Survey No.796/2 is a pathway and it is a poromboke land is also seriously disputed by the defendants in the written statement. The learned Trial Judge who heard the application for appointment of Commissioner concluded that the

plaintiff is fishing for evidence through appointment of Commissioner and dismissed the application.

3. I have heard Mr. V.Karthikeyan, learned counsel for the petitioner, Mr.T.M.Hariharan, learned counsel for the 4th respondent and Mr.Ravichandran Sundaresan for R1 to R3.

4. Mr.V.Karthikeyan, learned counsel for the petitioner would vehemently contend that since the suit is one for permanent injunction with reference to user of a particular property as a pathway and the defendants have denied the existence of the very pathway, the best method of proving existence of the pathway is only by seeking appointment of a Commissioner. Therefore, the Trial Court was not right in dismissing the application.

5. Contending contra, Mr.T.M.Hariharan, learned counsel for the 4th respondent, drawing my attention to the prayer in the Commissioner application, would submit that the object of the application itself is to

identify the property. He would take serious objection to the prayer where the plaintiff seeks measurement of the suit properties including Items 1 to 3 as per his title documents. This, according to Mr.T.M.Hariharan, cannot be allowed and it is an attempt made by the plaintiff to collect evidence to establish his title to Items 1 to 3 in the suit for permanent injunction with reference to user of Item 4 as a pathway. I have considered the rival submissions.

6. No doubt, the prayer in the Commissioner application is so wide that the plaintiff requires the entire revenue department of Vellore District to come over to the suit property and measure the same, but that by itself cannot be a ground for dismissing application. It is a common knowledge that today counsels are more used to cutting and pasting of prayers. This case is a good illustration of cutting and pasting of prayers in interlocutory applications. Counsels' mistake should not prejudice the party.

7. I am therefore of the opinion that the Trial Court was not right in strictly looking at the prayer and dismissing the application for

appointment of Commissioner. Hence, this civil revision petition allowed , the order of the Trial Court is set aside. The Trial Court is directed to appoint a Commissioner with a duty to identify Item 4 and find out whether there exists a pathway as described in Item 4 of the suit schedule and file a report. The Commissioner shall not exceed his warrant and measure other properties in the process. If he feels necessary, e\t Commissioner can take assistance of the Taluk Surveyor. Consequently, connected miscellaneous petition is closed. No costs.

22.12.2020

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Internet: Yes/No
Index: Yes/No
Speaking / Non-speaking.

To:
The District Munsif Court,
Katpadi, Vellore District.

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R.SUBRAMANIAN, J.

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