

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).No. 3903 of 2018

and

C.M.P.No. 21673 of 2018

1.Chinnappan
2.Anthoniammal
3.Mani

...Petitioners

Vs.

1.Murugan
2.Periyasamy

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order in I.A.No. 112 of 2017 in I.A.No. 502 of 2015 in O.S.No. 91 of 2015 on the file of the District Munsif, Attur dated 09.02.2018.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.K.Nagendra Prasad

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ORDER

The plaintiffs in O.S.No. 91 of 2015 are on revision, aggrieved by an order made in I.A.No. 112 of 2017 seeking appointment of a Commissioner to inspect the suit properties and measure the suit cart track found in Survey No. 409 / 1 with the help of a competent surveyor and file a report.

2. The suit was laid by the plaintiffs seeking permanent injunction claiming that he is entitled to use the suit pathway marked as A B C D in the plaint rough plan running along Survey No. 409/1 as access to his lands on the Southern side of the said pathway.

3. The defendants would resist the suit contending that the existence of the pathway is not disputed but the lie of the pathway is not the same as shown in the rough plan. The defendants would also claim that they are entitled to a right of way over certain path way in Survey No.408/7. The right of the defendants over the cart track in Survey No.408/7 is not the subject matter of the suit. The defendants filed the instant application

seeking appointment of a Commissioner to measure the pathway in Survey No.409/1 with the help of a Surveyor and notedown its physical features and file a report. The learned Trial Judge allowed the said application upon being convinced of the need for appointment of a Commissioner.

4. I have heard Mr. Avinash Wadhvani, learned counsel appearing for the petitioners and Mr.K.Nagendra Prasad, learned counsel appearing for the respondents.

5. Mr.Avinash Wadhvani, leared counsel appearing for the petitioner would contend that once the existence of the pathway is admitted, the need for appointment of a Commissioner does not arise. He would also submit that the parties cannot be allowed to gather evidence by the process of Commission. I have considered the submissions of the learned counsel.

6. The suit is one claiming an easementary right over the particular cart track which according to the plaintiff lies in a particular place as per the rough plan filed by him. Though the defendants admit the

existence of the pathway in Survey No.409/1 they claim that the lie of the said pathway is not as shown in the rough plan. Therefore, the essential dispute is as to the lie of the pathway in Survey No. 409/1. It can be decided satisfactorily only when the best evidence placed before the Court. The best evidence is a Commissioner's report which would demonstrate an actual lie of the pathway. Therefore, I do not see any illegality or irregularity in the order of the Trial Court appointing a Commissioner. This civil revision petition therefore fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

10.11.2020

kkn

Internet:Yes

Index:No

Speaking

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To:

The District Munsif Court,

Attur.

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R.SUBRAMANIAN, J.
KKN



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