

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.192 of 2021

K.R. Balamurugan Petitioner

Vs.

1. Pushpa

2. Logeswari

... Respondents

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 09.10.2020 on the file of the Additional District Munsif, Tiruchengode passed in I.A. No.8 of 2018 in O.S.No.88 of 2016.

For Petitioner

... Mr.E.P. Senniyangiri

For Respondents

... No Appearance

ORDER

The Civil Revision Petition has been filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 09.10.2020 on the file of the Additional District Munsif, Tiruchengode passed in I.A. No.8 of 2018 in O.S.No.88 of 2016.

2. The case of the petitioner is that the petitioner herein is the plaintiff and the respondents herein are the defendants in the Suit in O.S.No.88 of 2016 on the file of the District Munsif, Tiruchengode. The suit schedule property was originally belonged to the father of the 1st respondent herein and the husband of the 2nd respondent herein. A General Power of Attorney was jointly executed on 14.06.2010 by them to one R.Appusamy to deal with the said property in question. As per the said Registered General Power of attorney deed, the petitioner had purchased Suit "A" schedule property by virtue of Sale Deed dated 12.08.2011 in favour of him from the said Power Holder. The plaintiff/petitioner herein is draining the rain water from the suit A schedule property through the suit B schedule property to Tiruchengode to Salem Main Road apart from taking Cart, Men, and Vehicle through

"B" Schedule property to "A" Schedule property. The defendants/respondents are restricting the plaintiff to take his men and vehicle through the suit B schedule property to suit A schedule property and preventing the plaintiff/petitioner herein from laying an underground pipeline 3 feet below the ground level. Hence, the plaintiff/petitioner herein filed a suit in O.S. No.88 of 2016 on the file of the District Munsif of Tiruchengode, seeking for permanent injunction interdicting and restraining the defendants/respondents herein from interfering with his peaceful possession and enjoyment of the Suit A Schedule property and "B" suit schedule through which to reach the suit A Schedule property from Tiruchengode to Salem Main Road and also clearing the cart track fit for taking men, cart, cattle and vehicle in particular from in any way interfering with the embedding of underground pipeline 3 feet below the ground level on the Southern part of the suit cart track. Subsequently, the plaintiff/petitioner herein filed I.A. No.127 of 2016 in O.S. No.88 of 2016 before the Court below seeking for interim injunction whereby his prayer was allowed and at the same time, the plaintiff/petitioner herein was directed not to involve in the work in embedding of underground pipe line 3 feet below the ground level.

Thereafter, the defendants/respondents have filed I.A.No.8 of 2018 before the Court below seeking for to appoint an Advocate Commissioner for inspection of the suit schedule property to submit the report accordingly before the Court below which has been allowed by order dated 09.10.2020 by appointing the Advocate Commissioner and directing him to inspect the property and submit the report on the Suit Schedule property as prayed by the defendants/respondents herein. Being aggrieved by the aforesaid order, the plaintiff/petitioner herein has filed the present Civil Revision Petition to set aside the aforesaid order.

3. The learned counsel for the petitioner submitted that there is a categorical admission in the Written Statement filed by the defendants/respondents herein about the existence of Car-Track in the suit Schedule property. However, contradiction to the above, in the affidavit filed in I.A. No.8 of 2018, the defendants/respondents had stated that there is no Car-Track in S.No.27/1B1 in the Suit Schedule property. Because of the contradictory statement made by the defendants/respondents herein, it does not warrant the appointment of Advocate Commissioner. At the same time, previous owner of the suit

property did not dispute the existence of Car-Track until their death. Without challenging the Sale Deed dated 12.08.2011 which was executed by Power Agent of the Original Owner of the suit schedule property, the defendants/respondents are attempting to interfere with the suit "A" schedule property. Hence, the order of the Court below in allowing the I.A. No.8 of 2018 in O.S. No.88 of 2016 by appointing the Advocate Commissioner is erroneous and the same is liable to be set aside.

4. Heard the learned Counsel for the petitioner as well as perused the material available on record.

5. On a perusal of the record, it is seen that there is no dispute that the plaintiff/petitioner herein had purchased only the suit "A" schedule property by virtue of sale deed dated 12.08.2011 as per Document No.6396 of 2011 which was executed by Power of Attorney of the principals on behalf of the family members of the respondents herein who were the original owners of the suit schedule property. During the sale of the said property in question in favour of the plaintiff/petitioner herein, a rough plan was enclosed along with the Sale Deed dated

12.08.2011 according to which there was an existence of 20 feet of breadth road through the suit B schedule property to reach the suit A schedule property. However, as per the parent documents, there was no plan by showing 20 feet breadth road of cart track through out on ground. Further, the plaintiff/petitioner herein is using the way of "B" Schedule property to reach the "A" schedule property and is planing to lay an underground pipe 3 feet below the ground level that also will be embedding through 20 feet breadth road from the suit B schedule property to the A Schedule property. At this Juncture, this Court is of the considered view that unless it is verified by the Advocate Commissioner as to the features of the suit schedule property, the issues in the suit cannot be adjudicated.

6. The question of the locus standi of the plaintiff/petitioner herein is a matter of adjudication at the time of Trial. Now, the issue in question is the appointment of the Advocate Commissioner and on entire consideration of the case, this Court is of the considered view that there is no warranting circumstances to interfere with the order of the Trial Judge and therefore this Civil Revision Petition deserves no merit for

consideration. Hence, this Court directs the Advocate Commissioner who was appointed by the Trial Court, to visit the suit property with the assistance of qualified surveyor to ascertain the facts of the Suit schedule property in the presence of both parties and file report within a period of two months from the date of receipt of copy of this order.

7. With the above directions, the Civil Revision petition is disposed of. Consequently, connected miscellaneous petition is closed if any. No costs.

11.02.2021

Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

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To:

The Additional District Munsif,
Tiruchengode

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V.BHAVANI SUBBAROYAN, J.,
lbm



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