

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

C.R.P (PD).No.2648 of 2018

1.M.Periyasamy

2.C.Eswaramoorthi

... Petitioners

Versus

1.Chinnammal

2.S.Periyasamy

3.K.P.Periyasamy

4.P.Nandagopal

5.P.Chinnusamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India pleased, to set aside the fair and final order passed in I.A.No.231 of 2018 in O.S.No.209 of 2012 on the file of the II Additional Subordinate Court, Erode dated 30.07.2018 and allow the Civil Revision Petition and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioners : Mr.A.Sundaravadhanan

For Respondents : Mr.V.S.Kesavan

* * * *

ORDER

This Civil Revision Petition is filed to set aside the fair and final order passed in I.A.No.231 of 2018 in O.S.No.209 of 2012 on the file of the II Additional Subordinate Court, Erode dated 30.07.2018 and allow the Civil Revision Petition.

2.The above said I.A.No.231 of 2018 in O.S.No.209 of 2012 was filed for the appointment of an Advocate Commissioner in the above suit and to direct him to measure the suit schedule properties with the help of qualified surveyor as per Old S.F.Nos.231/A, 332/1, 333 and find out the north south cart track's actual location as per the old survey and also to direct the commissioner to measure the said property with resurvey records and file a super imposing plan.

3.After hearing both the parties, the court below passed an order to appoint Mr.A.Gokul as Advocate Commissioner to inspect the suit property and prepare a rough sketch after demarcating the cart track with the help of qualified surveyor and shall mention the fact in his report that in which of the survey numbers the cart track exist along with the extent as per the revenue records annexed with documents, if exists.

4.The learned counsel appearing for the revision petitioners submitted that the respondents herein originally had filed the suit in O.S.No.80 of 2011 before the District Munsif Court, Kodumudi for declaration and permanent injunction against the petitioners herein in respect of the cart-track. In the above said suit the respondents herein filed a petition for appointment of an Advocate Commissioner to measure the disputed cart track situated in the revision petitioners land. The said Advocate Commissioner also filed his report. As long as the said Advocate Commissioner's report is filed, they cannot file a new application in the present suit, once again to measure the suit property through the new Advocate Commissioner. The petitioners herein also not made any objection to the said Advocate Commissioner's report. Though the respondents herein have withdrawn the suit and subsequently filed the present suit in O.S.No.209 of 2012, initially the court below rejected the application in I.A.No.553 of 2012, for appointment of the Advocate Commissioner. Against the said order, the respondents herein filed a revision before this Court in CRP(PD).No.2663 of 2016 and this court on 04.11.2016, disposed of the above said CRP(PD).No.2663 of 2012 with a liberty to file a fresh application. Accordingly, the present I.A.No.231 of 2018 was filed by the respondents herein for appointment of the Advocate Commissioner to measure the suit property with the help of qualified surveyor as per Old S.F.Nos.331/1A,

332/1, 333 and to find out the cart track location. There is no necessity for the respondents herein to file the application in I.A.No.231 of 2018 for the same subject i.e. for appointment of the Advocate Commissioner. Hence, he prayed to set aside the order of the court below.

5.The learned counsel appearing for the respondents submitted that the main prayer in the suit with regard to the measurement of the Old Survey number. Therefore, it is necessary to appoint the Advocate Commissioner to measure the property as pleaded and the court below allowed the above said application and nothing wrong in the order passed by the court below and he prayed for dismissal of this Civil Revision Petition.

6.Heard the learned counsel for the revision petitioners and the respondents.

7.Originally the respondents herein filed a suit in O.S.No.80 of 2011 for declaration and permanent injunction. In the above said suit, the respondents herein filed an application for appointment of an Advocate Commissioner to measure the property and file his report. The Advocate Commissioner was appointed and he was also filed his report. Subsequently

the suit was dismissed as withdrawn. The respondent once again filed the present suit and filed I.A.No.553 of 2012, for appointment of Advocate Commissioner. The above said petition was dismissed. As against, the respondents herein preferred a revision before this Court in CRP(PD).No.2663 of 2012 and this Court vide order dated 04.11.2016 disposed of the above said Civil Revision Petition with a liberty to file a fresh application. Hence, the respondents filed another application in I.A.No.231 of 2018 and the court below allowed the above said application and appointed Mr.Gokul as Advocate Commissioner and the Advocate Commissioner filed his report, wherein he has stated that the disputed cart track is situated in the revision petitioners land.

8.The respondents herein filed the present application for the measurement of the disputed cart track and for demarcating the boundary line in Old S.F.No.331/1A and Old S.F.No.332, 333 and 334 in Kulavilakku Village. At this juncture, it would be necessary to find out the reason for appointment of the present Advocate Commissioner and the earlier Advocate Commissioner. The earlier Advocate Commissioner was appointed and filed his report without any measurement. However, the present Advocate Commissioner is appointed to inspect the suit property and demarcate the cart track with the help of qualified surveyor. In fact the said appointment would

help the court to arrive at correct finding. The interest of the petitioner no way going to be prejudiced. Hence, I do not find any substance in the submission of the counsel appearing for the petitioners to set aside the order passed by the court below.

9.In view of the above, this Court does not find any infirmity in the order passed by the court below. However, this court is of the opinion that it is for the court below to consider the present Advocate Commissioner's Report as well as the earlier Advocate Commissioner's Report along with the objections if any filed by both the parties, on merit, after the trial. If necessary the court below shall permit both the parties to cross examine the Advocate Commissioner.

10.In the result, this Civil Revision Petition stands dismissed with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
ah

To

The Principal District Munsif,
Principal District Munsif Court, Kancheepuram.

WEB COPY

09.02.2021

KRISHNAN RAMASAMY, J.,

ah



C.R.P (PD).No.2648 of 2018

WEB COPY

09.02.2021