



C.R.P.(PD).Nos.3413 & 3418 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE **S.KANNAMMAL**

C.R.P.(PD).Nos.3413 & 3418 of 2017

and

C.M.P.No.15919 of 2017

[Video Conferencing]

1.T.Selvaraj

2.T.Viswanathan

3.T.Ramesh

4.T.Ramasamy

... Petitioners in both petitions

vs.

N.Kotteswaran

... Respondent in both petitions

Common Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.07.2017 in I.A.Nos.8048 & 8047 of 2017 in O.S.No.4705 of 2013, on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Petitioners in

both petitions : Mr.P.Chandrasekar

For Respondent in

both petitions : Mr.P.Mani



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C O M M O N O R D E R

These Civil Revision Petitions have been filed, against the fair and decreetal orders dated 31.07.2017 passed in I.A.Nos.8048 & 8047 of 2017 in O.S.No.4705 of 2013, on the file of the VIII Assistant Judge, City Civil Court, Chennai.

2.Heard the counsel for the parties.

3.The petitioners herein filed a suit in O.S.No.4705 of 2013 for declaration declaring that they are the absolute owners of 3 feet length and 40 feet breadth of passage and also for permanent injunction restraining the defendant/respondent herein or his agents from in any way interfering with peaceful possession and enjoyment of the exclusive passage.

4.The respondent herein filed written statement denying the averments of the petitioners. That apart the respondent herein also filed a suit in O.S.No.4710 of 2013 for permanent injunction restraining the petitioners herein or their agents from in any manner preventing him for using the common passage.



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5. Admittedly, both the suits in O.S.No.4705 of 2013 and O.S.No.4710 of 2013 were jointly tried together and they are pending for hearing the final arguments. During the stage of final arguments, the petitioners herein filed I.A.No.8047 of 2017 and I.A.No.8048 of 2017 to reopen the case to appoint an Advocate Commissioner to note down the physical features of the suit property. The Trial Court after hearing both the parties, dismissed the above petitions. The Trial Court has observed that the petitioners have filed two applications seeking for appointment of an Advocate Commissioner to show that the respondent herein is having yet another passage on the back side of his property which is having nexus to the main street and the applications were filed at a belated stage.

6. The learned counsel appearing for the petitioners would submit that during the course of cross examination of the respondents herein it has come to light that there is an alternative pathway which can be used by the respondents and therefore immediately after the conclusion of the cross examination of the respondents they have filed the instant application for appointment of an Advocate Commissioner. However, the Trial Court



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dismissed the application only on the ground of delay in filing the application without taking note of the fact that the dismissal of the claim of the revision petitioners would adversely effect their right to get a decree in the suit. In this context, the learned counsel for the petitioners also relied upon the decision of this Court passed in C.R.P.(NPD).No.3895/2011, dated 17.01.2017 wherein this Court has appointed an Advocate Commissioner even during the pendency of the First Appeal. By pointing out the above, the learned counsel for the petitioners prayed for setting aside the order of the Trial Court with allow this Civil Revision Petition.

7. Admittedly, two suits have been filed before the Trial Court and both the suits were filed in the year 2013. The trial in the suits commenced and during the course of trial, parties have let in evidence. Admittedly, the respondent in his cross examination has divulged the fact that there is an alternative pathway available for the petitioners to reach their land. However, it is surprising to note that only upon the testimony of the respondent during his cross examination, the petitioners would come to know the existence of an alternative land. This submission of the petitioners cannot merit acceptance.



First of all even in the plaint there should be a pleading to that effect. But it is conspicuously absent in this case. It is also surprising to note that the petitioners who seek for a declarative decree would feign ignorance of the availability of such an alternative land, however, it is stated that they came to know about such alternative land pursuant to the deposition of respondent. It is needless to say that the plaintiffs have to prove their own case by letting in oral and documentary evidence. The present applications have admittedly been filed when the suit was posted for arguments, therefore in the opinion of this Court, the Trial Court has rightly dismissed the applications and refused to appoint an Advocate Commissioner. At the fag end of the trial if an Advocate Commissioner is appointed, it would only prolong the trial. When the suit is already posted for arguments of the counsel for both sides, the present applications filed by the revision petitioners cannot be entertained at that stage. Having regard to the fact that the applications have been filed at the fag end of conclusion of the suit filed by the parties the Trial Court has rightly dismissed the applications, and it does not call for any interference by this Court.



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8. Accordingly, both Civil Revision Petitions are dismissed. No costs.

The Trial Court is directed to proceed with the case and dispose of the suit on merits as expeditiously as possible. Consequently, the connected miscellaneous petition is closed.

22.12.2021

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Index: Yes/No

Speaking Order : Yes / No

To:

1. The VIII Assistant Judge,
City Civil Court,
Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras.



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S.KANNAMMAL,J.

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