

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.4193 of 2018 and
CMP.No.23058 of 2018

Balasubramaniam

...

Petitioner

Vs

Selvi

...

Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 08.10.2018 passed in IA.No.271 of 2017 in OS.No.363 of 2013 on the file of the Principal District Munsif Court, Coimbatore.

For Petitioner : Mr.Govi Ganesan K

For Respondent : Mr.K.Sandhya
for M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 08.10.2018 passed in IA.No.271 of 2017 in OS.No.363 of 2013

on the file of the Principal District Munsif Court, Coimbatore, thereby dismissing the petition seeking appointment of advocate commissioner.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit for partition in respect of 'A' schedule property and seeking permanent injunction in respect of 'B' schedule cart track. The case of the plaintiff is that his brother sold his common western half share to one, Savithri and Selvi. The said Savithri is the wife of one, Govindaraj and the said Selvi is the wife of one, Kannappan. Both are brothers of the petitioner herein. The said Savithri released her half right in favour of the defendant in respect of the common western half share by the registered release deed dated 09.03.1999. Thus, the respondent became owner of the common western half of the 'A' schedule property. Insofar as 'B' schedule property is concerned, it is a common north south cart track. The said cart track is running north south through the above western half share of the defendant. Whereas, the respondent filed written statement and stated that there is no cart track in her share.

3. On perusal of the partition deed which was marked as Ex.A1 revealed that there is a cart track. However, it was denied by DW1 and he categorically deposed that he has no objection to appoint advocate commissioner to find out whether there is cart track in the 'B' schedule property. Therefore, the petitioner filed petition seeking appointment of advocate commissioner to note down the physical features of the 'B' schedule property i.e. cart track and the lie of the north south water channel and file report. However, the court below dismissed the petition for the reason that the application seeking appointment of advocate commissioner is nothing but collection of evidence.

4. The learned counsel for the respondent would submit that according to the petitioner, there is a cart track in the 'B' schedule property, then the petitioner has to prove the same by let in evidence. Therefore, seeking appointment of advocate commissioner is nothing but collection of evidence and it cannot be done and the court below rightly dismissed the petition.

5. It is true that the plaintiff ought to have proved his case by let in evidence. Whereas in the case on hand, as stated supra, as per the partition deed, there is cart track and the western portion of the 'A' schedule property belongs to the plaintiff's brother and purchased by the respondent. Therefore, if advocate commissioner is appointed to inspect the 'B' schedule property to note down its physical features, it would be easier for the trial court to decide the issue in respect of prayer 'B'.

6. In view of the above, this civil revision petition is allowed and the order dated 08.10.2018 passed in IA.No.271 of 2017 in OS.No.363 of 2013 on the file of the Principal District Munsif Court, Coimbatore is set aside. Consequently, connected miscellaneous petition is closed. No order as to costs.

सत्यमेव जयते

15.07.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

The Principal District Munsif,
Coimbatore



C.R.P.(PD) No.4193 of 2018

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