



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP(PD) (MD)No.874 of 2021

and

CMP(MD)No.4772 of 2021

K.Ganesan ... Petitioner/Respondent/Defendant
versus

P.Alagan ... Respondent/Petitioner/Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 18.12.2020 passed in I.A.No.2 of 2020 in O.S.No.224 of 2019 on the file of the District Munsif, Thirumangalam.

For Petitioner : Mr.N.Vallinayagam

ORDER

This Civil Revision Petition is directed against the order dated 18.12.2020 passed by the District Munsif Court, Thirumangalam, allowing I.A.No.2 of 2020 in O.S.No.224 of 2019.

2. The suit in O.S.No.224 of 2019 was filed by the respondent herein for restraining the revision petitioner from interfering with his easementary right to reach the first suit schedule item through the second suit schedule item. The revision petitioner has filed written statement, denying the claim of the plaintiff. The stand of the revision petitioner is that the second suit schedule item has been purchased by him and that the plaintiff has no right to reach the first suit schedule item through the second suit schedule item of the property. The revision petitioner has also denied that the second suit schedule item of the land is the only way to the plaintiff to reach the first suit schedule item.

3. In this background, the plaintiff filed I.A.No.2 of 2020, by claiming that except the second item, there is no other pathway to reach his house. Therefore, the plaintiff wanted the trial Court to appoint an Advocate Commissioner to find out if there is any alternative pathway to reach his house. The revision petitioner filed a counter affidavit, contending that the plaintiff has attempted to collect evidence by way of inspection of the suit property. The Court below, however, allowed the application and appointed an Advocate Commissioner. Challenging the same, this



Civil Revision Petition has been filed.

4. The learned counsel for the petitioner reiterated the contentions set out in the Memorandum of Grounds. He also places reliance on the following decisions:

(i) 2005 3 MLJ 473 (Chandrasekaran and others vs. V.Doss Naidu)

(ii) 2010 5 LW 893 (A.Karthikeyan vs. R.Swaminathan & S.Pushpavathi)

(iii) 2010 5 LW 897 (Dr.Sundara Rajan vs. Susana Ravi Sekar)

He strongly contended that the plaintiff is endeavouring to collect evidence through the Advocate Commissioner.

5. I am not persuaded by the above said submissions. The plaintiff claims easementary right over the second schedule item of the suit property. The stand of the plaintiff is that except through the second schedule item of the suit property, he cannot access his property through any other mode. The defendant had categorically denied the claim that only through the second item of the suit property, the plaintiff can reach his house. In view of the above pleadings, it is absolutely necessary to find out, if there is any other alternative pathway. The Court below had taken the view that if an Advocate Commissioner is appointed, that would definitely help to elucidate the matter in dispute and that cannot be categorized as collection of evidence. I do not find any irregularity or illegality in the order passed by the trial Court.

6. The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1. The District Munsif,
Thirumangalam.

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+1 CC to M/s.N.VALINAYAGAM, Advocate (SR-19196[F] dated
11/06/2021)

**CRP (PD) (MD) No. 874 of 2021
10.06.2021**

MJ(CO)

TR(18.06.2021) 3P 3C