



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.1115 of 2021

and

C.M.P. (MD) No.6494 of 2021

Mr.G.Jeyaram

.. Petitioner/Petitioner/
Plaintiff

-vs-

1.Chelladurai
2.Nachammal
3.Kubendran
4.Chinnasamy

.. Respondents/Respondents/
Defendants

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 17.02.2021 passed in I.A.No.1 of 2019 in O.S.No.498 of 2013 on the file of the Additional District Munsif Court, Dindigul.

For Petitioner	:	Mr.R.J.Karthick
For Respondents	:	Mr.PT.S.Narendravasan

ORDER

The plaintiff is before this Court challenging the order dated 17.02.2021 made in I.A.No.1 of 2019 in O.S.No.498 of 2013 in and by which, the learned Additional Distirct Munsif, Dindigul, dismissed the application filed by the petitioner/plaintiff seeking re-issue of a warrant to the earlier Commissioner to note down the physical features and the changes that had taken place in the suit property subsequent to his earlier visit and submit a report.

2.The suit in question is one for a permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule Item Nos.I and II of the properties. Item No.I was a vacant site measuring an extent of 3924 sq.ft. and the II Item of property is a pathway.

3.The plaintiff's case is that the II Item of property was the only access to the I Item of property and the same was being used by the plaintiff to reach his property. The defendants were attempting



to block the same and hence the suit.

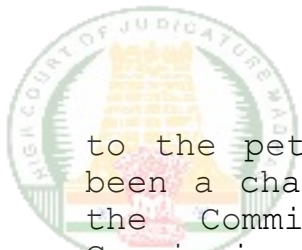
4.The defendants had filed a written statement denying the right of the plaintiff over the property stating that there was an alternate path available to the suit property.

5.Pending the suit, an Advocate Commissioner was appointed, who had submitted his report as well as the plan. The plan had noted down the physical features of the properties of both the plaintiff as well as the defendants as it existed on the date of the inspection. The plan would show that on the Eastern boundary of the property comprised in S.No.256/4B3, the main road viz., the road from Sempatti to Palani was situate and in the North, there was a 5 metre space running from the road and proceeding beyond S.No.256/3 towards the West. The report has been signed on 31.10.2016. Thereafter, the plaintiff has come forward with the impugned application seeking the re-issue of warrant to the earlier Commissioner stating that after the visit of the Advocate Commissioner, obstructions have been caused on the II Item of property and the same has to be noted down for which purpose, there was a necessity for re-issue of the warrant to the earlier Commissioner. The said application was dismissed by the learned Additional District Munsif, Dindigul, on the ground that the earlier Commissioner had already noted down the physical features of both properties. She had observed that the suit is simpliciter one for bare injunction and in these circumstances, to note down as to whether the defendants had disturbed the peaceful possession of the suit property of the plaintiff, no Commissioner's report is required and the plaintiff has to only prove the possession and that his possession is sought to be disturbed. The learned Judge had also observed that the plaintiff cannot use the Advocate Commissioner to gather evidence. She has also held that the plaintiff has not challenged the earlier Commissioner's report and therefore, there was no need to re-issue the warrant to the earlier Commissioner and consequently, the application was dismissed. Aggrieved by the same, the petitioner is before this Court.

6.Heard the learned counsel on both sides.

7.Perusal of the records would reveal that earlier, a Commissioner had been appointed to note down the physical features of the property and a detailed report has been filed showing the physical features of both the properties. The plaintiff would contend that the II Item of property is a pathway, which is disputed by the defendants. That apart, the Commissioner had not only noted down the physical features, but has also noted down the existence of the space measuring 5 meters proceeding from Sempatti to Palani road Westwards.

8. This Court is of the considered opinion that it is well open



to the petitioner to prove by independent evidence that there has been a change in the physical features of the property pursuant to the Commissioner's report. The plaintiff cannot use the Commissioner for collecting evidence. That apart, the suit is one for a bare injunction and there exists no exceptional circumstances. Therefore, an Advocate Commissioner cannot be appointed to note down the physical features of the property. In these circumstances, I do not find any reason to interfere with the order of the learned Additional District Munsif, Dindigul, dated 17.02.2021 passed in I.A.No.1 of 2019 in O.S.No.498 of 2013 and the same is confirmed. Consequently, the Civil Revision Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

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

The Additional District Munsif Court,
Dindigul.

+1 CC to M/s.K.PERIYASAMY, Advocate (SR-37367[F] dated 06/12/2021)

C.R.P.(PD) (MD) No.1115 of 2021

Dated: 03.12.2021

SRK(CO)

KB(29.12.2021) 3P 3C