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C.R.P(PD).No.1134 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.1134 of 2022
and C.M.P.No.5877 of 2022

1.Venkatachalam
2.V.Palanisamy

... Petitioners

..Vs..

A.Sengodan

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order of allowing Advocate Commissioner Petition in I.A.No.1 of 2021 in O.S.No.77 of 2020 dated 04.01.2022 passed by the learned Subordinate Judge, Omalur, Salem District.

For Petitioners : Mr.B.Sundarapandiyan

For Respondent : Mr.N.Manokaran

O R D E R

This Civil Revision Petition has been preferred challenging the order of the learned Subordinate Judge, Omalur, Salem District, dated 04.01.2022 made in I.A.No.1 of 2021 in O.S.NO.77 of 2020.



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2.The revision petitioners are the defendants 1 and 2 in the suit.

The respondent/plaintiff has filed a suit for permanent injunction restraining the defendants from interfering with his enjoyment of the suit property along with the 15 feet cart track and also for mandatory injunction to fix certain correction in the survey number of the suit property by the first defendant and to declare the document dated 12.06.1995 (537 of 4) as null and void. After the trial was commenced and the plaintiff's side evidence was over, the defendants have filed a petition for appointment of Commissioner with the help of revenue officials to visit the suit property to note down the physical features of the mamool cart track and file a report and the same was dismissed. Aggrieved over that, the defendants have preferred this revision.

3.The learned counsel for the petitioners submitted that the description of the property says about a cart track and even in the written statement of the defendants also the description of the suit schedule property is questioned and certain facts about the cart track have been



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stated. Since the matter incidentally involves about the enjoyment of the cart track also, it is essential for appointment of an Commissioner in order to note down the physical features and to file a report.

4.The learned counsel for the respondent submitted that the learned trial Judge has clearly observed that the suit was not filed with regard to any claim on path way and that as per the case projected by the parties, both the parties have got separate path ways and hence, the application for appointment of Commissioner to measure the cart track, about which there was no dispute between the parties is unnecessary.

5.At the time when the application for appointment of Commissioner was filed, the evidence of the plaintiff alone was over and the evidence of the defendants was yet to begin. Even though the petition filed by the revision petitioners is belated one, the pleadings made by the revision petitioners/defendants in the written statement show that there are certain averments about the cart track and that the description of the



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cart track shown in the plaint schedule is wrong. In view of such pleadings, it has to be made clear as to whether the path way right claimed by the respondent/plaintiff in his suit schedule property, has been rightly described and that he has got a right to declare the enjoyment over the same. Since the description of the property and the pleadings of the defendants in the suit show some details about the physical features and they are required for better disposal of the case, the learned trial judge could have allowed the petition by appointing an Advocate Commissioner. The respondent/plaintiff will not be prejudiced, if the report of the Commissioner is filed. Because, the parties are at liberty to file their objection to the Advocate Commissioner's report and if needed, the Commissioner himself can be examined.

6.Hence, the Civil Revision Petition is allowed and the order of the learned Subordinate Judge, Omalur, Salem District, dated 04.01.2022 made in I.A.No.1 of 2021 in O.S.NO.77 of 2020, is hereby set aside. The learned trial Judge is directed to appoint an Advocate Commissioner with



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directions suiting to the petition. No costs. Consequently, connected

Miscellaneous Petition is also closed.

23.06.2022

vkr

Index:Yes No

Speaking Order:Yes/No

To

- 1.The Subordinate Judge,
Omalur, Salem District.
- 2.The Section Officer,
VR Section, Madras High Court,
Chennai.



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R.N.MANJULA,J.

Vkr

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