



C.R.P.No.907 of 2021
and C.M.P.No.7405 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.907 of 2021

and

C.M.P.No.7405 of 2021

1.Kandhasamy

2.K.Shanmugam

... Petitioners

Vs.

1.Velusamy

2.Gunasekaran

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 19.03.2021 passed in I.A.No.2 of 2021 in O.S. No.2 of 2021 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

For Petitioners : Mr.A.Sundaravadhanan for
Mr.C.E.Pratap

For Respondents : Ms.G.Priya for
Mr.M.Guruprasad



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ORDER

The present petition is filed challenging the fair and decreetal orders dated 19.03.2021 passed in I.A.No.2 of 2021 in O.S. No.2 of 2021 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

2.The revision petitioners are the plaintiffs in O.S. No.2 of 2021 on the file of the District Munsif cum Judicial Magistrate, Kodumudi. They filed the suit for bare injunction against the respondents/defendants. During the pendency of the suit they filed an application in I.A.No.2 of 2021 under Order XXVI Rule 9 and Section 151 CPC to appoint an Advocate Commissioner to inspect the suit property and to note down the physical features.

3.The respondents/defendants filed their counter and after full contest, the learned District Munsif cum Judicial Magistrate, Kodumudi, dismissed the application vide her orders dated 19.03.2021 on the ground that the existence of cart track is not disputed by both parties and that



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there is no dispute in identifying the same. Aggrieved over the orders passed by the trial Court, the present Civil Revision Petition is filed.

4.Heard Mr.A.Sundaravadhanan, learned counsel for the revision petitioners and Ms.G.Priya, learned counsel for the respondents.

5.Mr.A.Sundaravadhanan, learned counsel for the revision petitioners would contend that the suit is filed for a bare injunction. The case of the plaintiffs is that there is a cart track in R.S.No.147, 277/7, 277/8 & 277/9 of Kilambadi Village, Kodumudi Taluk and that the plaintiffs are using the said cart track to reach their lands in S.No.277/4 & 277/3. It is his further contention that the defendants are obstructing the usage of the cart track by the plaintiffs. According to him, appointment of Advocate Commissioner is very important especially when the defendants claim that it is their exclusive property.

6.The defendants in their written statement had not disputed the existence of the cart track but their contention is that the said cart track is their property and that the plaintiffs have no right to use the same. Thus the existence of the cart track, as rightly pointed out by the learned trial Court Judge, is not disputed by both the parties. In para 6 of



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the plaintiff it is stated that the common cart track branches out on the left hand side from Kalingarayan to Malaiyampalayam branch canal and proceed towards east in R.S.No.277 & 278 in which R.S.No.278 belongs to the respondents/defendants. It is not the case of the plaintiffs that the common cart track is encroached by the respondents and they have not also sought for a declaration that the cart track is a common cart track.

7.In such circumstances, it is not necessary to appoint an Advocate Commissioner to inspect the suit property and to note down the physical features. Therefore, I do not find any infirmity in the orders passed by the trial Court.

8.Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

28.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

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R. HEMALATHA, J.

mtl

To

- 1.The District Munsif cum Judicial Magistrate, Kodumudi.
- 2.The Section Officer, VR Section, High Court, Madras.

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