



C.R.P. (PD) No.1522 of 2020
and CMP No.9037 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (PD) No.1522 of 2020
and CMP No.9037 of 2020

1. S.Subbu Gounder

2. S.Selvaraj

3. S.Saravanan

.. Petitioners

Vs.

1. K.Nirmala

2. S.Periyasamy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 06.03.2020 in I.A.No.1 of 2019 in I.A.No.420 of 2015 in OS No.116 of 2015 on the file of the Additional District Munsif Court, Tiruchengode.



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C.R.P. (PD) No.1522 of 2020
and CMP No.9037 of 2020

For Petitioners : Mr.D.Shivakumaran

For Respondents : Mr.L.Mouli

ORDER

The plaintiffs who filed in their attempt to have the warrant of commission re-issued for a re-inspection of the property are on Revision.

2. The suit has been filed by the plaintiffs seeking a permanent injunction restraining the defendants from interfering with the enjoyment of the plaintiffs of the suit cart track shown as A,B,C & D in the rough plan, situate in 321/6A and 321/7A of Marapparai Village, Tiruchengode Taluk. The plaintiffs filed an application in IA No.420 of 2015 seeking appointment of a Commissioner to note down the physical features of the cart track mentioned as A,B,C,D, E and F in the plaint plan measure its length and breadth as well as the poultry farms and note down the physical features.

3. The said application was allowed and the Commissioner so



C.R.P. (PD) No.1522 of 2020
and CMP No.9037 of 2020

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appointed, filed a report and plan, showing the measurements of the cart track and the physical features. The said report and plan were filed on 09.06.2015. After the evidence in the suit was recorded, the plaintiffs came up with the instant application in IA No.1 of 2019 seeking re-issuance of the warrant to the same Commissioner for a re-inspection contending that the defendants are raising a plea that the cart track shown in the Commissioner's plan is different from the cart track in which the plaintiffs have been given a right.

4. In view of the said defence projected and the evidence let in, the plaintiffs sought for re-issuance to dispel the claim of the defendants. The Trial Court rightly dismissed the application concluding that the plaintiffs, who are claiming an easement by grant have filed their Sale Deed which contains the grant and the Commissioners' Report which has already been filed shows the existence of the cart track.

5. The suit being one for permanent injunction, it is for the plaintiffs to prove their right to enjoy the cart track and the actual enjoyment. The



C.R.P. (PD) No.1522 of 2020
and CMP No.9037 of 2020

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Trial Court also found that it is wholly unnecessary to re-issue the warrant, as there is no dispute regarding the lie of the cart track and the measurements of the cart track. These observations which have been made by the Trial Court, in the Course of the order rejecting the application for re-issuance of the warrant make it amply clear that it is for the plaintiffs to establish their rights over the cart track which has been shown to be in existence by the Commissioner.

6. The earlier Report of the Commissioner and the plan would show that there is a cart track as claimed by the plaintiffs. If the defendants claim that there is a different cart track and there is another cart tract which answers the description as found in the Sale Deed in favour of the plaintiffs, it is for the defendants to establish the same. The plaintiffs need not go into a fishing expedition to establish a non-existent cart track by seeking re-issuance of the warrant to the commission.

7. I therefore do not see any material irregularity or illegality in the



C.R.P. (PD) No.1522 of 2020
and CMP No.9037 of 2020

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order of the Trial Court dismissing the application, more so, when the plaintiffs does not claim that the report of the Commissioner is flawed for any reason. The Revision therefore fails and it is accordingly **dismissed**. Consequently, the connected miscellaneous petition is closed. No costs.

jv

03.01.2022

Index: Yes/No
Internet: Yes/No
Speaking order

To

1. The Additional District Munsif Court,
Tiruchengode.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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C.R.P. (PD) No.1522 of 2020
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R.SUBRAMANIAN, J.

jv

Civil Revision Petition (PD) No.1522 of 2020
and CMP No.9037 of 2020

03.01.2022