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C.R.P. (PD) No.1926 of 2022
and C.M.P. No.9812 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (PD) No.1926 of 2022
and C.M.P. No.9812 of 2022

- 1.Easwaran @ Arthanareeswaran
- 2.Chinnugounder @ Chinnusamy
- 3.Saraswathi
- 4.Tamilselvi
- 5.Indirani
- 6.Sundaran

...

Petitioners /
Defendants

versus

Ramachandran

...

Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.10.2021 made in I.A.No.2 of 2021 in O.S.No.86 of 2020 on the file of the learned Principal District Munsif, Bhavani, Erode District and to allow this petition.

For Petitioners : Mr.D.Selvaraju



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ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Principal District Munsif, Bhavani, Erode District, dated 04.10.2021 made in I.A.No.2 of 2021 in O.S.No.86 of 2020.

2. The revision petitioners are the defendants in the suit. The respondent / plaintiff filed the suit for declaration and permanent injunction. During the pendency of the suit, the defendants filed the petition for appointment of the Commissioner by stating that in the suit cart track, the respondent / plaintiff is attempting to plant trees and change the physical features and hence, the Commissioner should visit the suit property, note down the physical features and file his report. The said petition was dismissed. Aggrieved over that, the petitioners have filed the present Civil Revision Petition.

3. The learned counsel for the petitioners submitted that the existence of the cart track is not in dispute but the parties are in dispute about their respective right over the cart track; during the pendency of the suit, the respondent attempted to plant seedlings and change the physical



features of the property and hence, the revision petitioners were forced to file the petition for appointment of the Commissioner.

4. When the dispute with regard to the entitlement of the right over a pathway, the parties have to prove the same by producing the relevant materials before the Court. When the existence of the pathway is not in dispute, the necessity to note down its physical features does not arise. Even though it is alleged that the respondent is attempting to plant trees in the pathway, the petitioners have not claimed any relief for mandatory injunction and hence, that cannot be a matter in issue in the suit filed by the plaintiff for the relief of declaration and permanent injunction.

5. The learned trial Judge is right in making an observation that the appointment of the Commissioner is not necessary and dismissed the petition. Hence, I do not find ground for interference.

6. Accordingly, this Civil Revision Petition is dismissed and the order dated 04.10.2021 passed by the learned Principal District Munsif, Bhavani, Erode District in I.A.No.2 of 2021 in O.S.No.86 of 2020 is hereby



confirmed. However, it is open to the revision petitioners to seek appropriate remedy if at all they have got any cause of action or if advised appropriately.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

24.06.2022

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

sri

To

The Principal District Munsif,
Bhavani, Erode District.



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R.N.MANJULA, J.

sri

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