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CRP (PD) No. 2934 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No. 2934 of 2021

And

C.M.P.No. 21058 of 2021

1. Perumayee
2. Arunachalam
3. S.Santhi
4. Sharmila
5. Rajeshkumar

... Petitioners/Petitioners/
Respondents/Defendants

Vs

Bakkiyam

... Respondent/Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 13.12.2019 made in I.A.No. 589 of 2018 in I.A.No. 823 of 2012 in O.S.No. 382 of 2012 on the file of the Additional District Munsif, Tiruchengode.

For Petitioners : Mr. R.Marudhachalamurthy



ORDER

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The defendants in O.S.No. 382 of 2012 have come up with this Revision challenging the dismissal of their applications in I.A.No. 589 of 2018 seeking to re-issue the warrant of commission to the Commissioner with a direction to him to measure the land in S.F.No. 206/1 and S.F.No. 206/2 with the help of qualified surveyor and particularly note down the non existence of cart track which is mentioned in earlier Commissioner's report and find out its survey number and note down other physical features shown to the Commissioner during the time of his visit.

2. The suit is one for a permanent injunction restraining the defendants from interfering with the peaceful use and enjoyment of the suit “AB” Cart Track by the plaintiff to reach her lands in S.No. 206/1, Karuvelampatti Village. According to the plaintiff, she is entitled to use the said Cart track which is in existence to reach her land in S.No. 206/1.

3. Along with the plaint, the plaintiff filed an application in I.A.No. 823 of 2012 seeking appointment of a Commissioner. A



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Commissioner was appointed. He had inspected the property and filed a report as early as on 21.08.2013. A plan has also been filed. The petitioners have filed their objections to the said report of the Commissioner on 27-02-2017. Thereafter, the petitioners have filed the instant application in I.A.No. 589 of 2018 seeking re-issue of the warrant mainly on the ground that the Commissioner has not taken assistance of a surveyor for measuring the property and the report of the Commissioner which gives an impression that the Cart Track runs in S.No. 206/1 is factually incorrect.

4. The trial Court dismissed the application concluding that the appointment of Commissioner or re-issue of warrant is wholly unnecessary as the dispute is not in relation to the existence of the pathway but in relation to the right of the plaintiff to use the pathway to reach her lands in S.No. 206/1.

5. Mr. Marudhachalamurthy, learned counsel appearing for the petitioners would vehemently contend that the trial Court was not right in dismissing the application. Drawing my attention to the earlier report of the



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Commissioner he would contend that the reading of the report may lead to an inference that the suit Cart Track is situated in S.No. 206/1.

6. I am unable to read the report of the Commissioner in the manner suggested by the learned counsel for the petitioner. All that the Commissioner has said is that there is a pathway and on the western side of the pathway, there is a bill board in which it is stated S.No. 206/1, Sivamurugan Nagar. That by itself would not lead to the inference that the cart track is in S.No. 206/1. Moreover, the suit is for a permanent injunction filed by the plaintiff on a specific allegation that she is entitled to use the Cart Track to reach the land in S.No. 206/1. It is for the plaintiff to prove her case.

7. The petitioners, who are the defendants in the suit, need not prove the absence of the pathway. If the plaintiff fails to establish her claim, the suit will be thrown out. There is no question of measuring the property with reference to the survey number in order to decide as to whether the plaintiff has a right of user over a pathway or not. In such view of the matter, I do not see any reason to interfere in this Revision.



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8. Therefore, this Civil Revision Petition fails and it is accordingly, dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

03.01.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. Additional District Munsif Court, Tiruchengode.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

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