

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.3076 of 2021
and
C.M.P.No.21669 of 2021

1. V.Muthusamy

2. Subramani

3. Kandasamy

... Petitioners

.Vs.

1. P.Selvaraj

2. V.Muthusamy

3. M.Senthilkumar

4. Thangarasu

5. Balusamy

6. V.Murugesan

... Respondents

PRAYER:-

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 07.09.2021 made in I.A.No.4 of 2020 in I.A.No.3 of 2019 in O.S.No.195 of 2016 on the file of the Ld.District Munsif Court, Tiruchengode by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manoharan

For Respondents : Mr.N.S.Suganthan
Cavector Counsel
For R1 to R6

ORDER

Aggrieved by the dismissal of their application seeking to scrap the report and plan of the Advocate Commissioner, dated 21.09.2020 filed in I.A.No.3 of 2019 in O.S.No.195 of 2016 on the file of the learned District Munsif Court, Tiruchengode, the defendants are before this Court. The brief facts of the case are as follows:-

2. The plaintiffs/respondents 1 to 6 herein have filed the suit O.S.No.195 of 2016 for a declaration that they are entitled to use and enjoy the suit cart track and for an injunction restraining the defendants their men, successors, heirs and agents from preventing the usage of the same by the plaintiffs. The rough plan filed along with the plaint describes the cart track as well as the properties in the possession of the plaintiffs and the defendants. The suit was filed on 18.08.2016.

3. The defendants have filed a written statement on 02.01.2017. It is their case that the cart track is in existence but however, it is a cart track which is an exclusive cart track pathway of each of the defendants and the pipeline which is laid in the cart track which is only for the use of the defendants. They would therefore submit that the plaintiffs have no right over the pathway. The defendants have pleaded that the plaintiffs had access through an alternative pathway and they did not have to use the suit pathway as access to their property. It was also their case that the suit pathway stopped at the house of the defendant did not proceed further to points C and D shown in the rough plan.

4. The plaintiff had thereafter taken out an application in I.A.No.03 of 2019 for appointing an Advocate Commissioner to note down the physical features in and around the suit property with the help of the Village Administrative Officer. The application for the appointment of the Advocate Commissioner was resisted by the respondents/defendants who would contend that there is no quarrel about the existence about the the suit cart track and the only issue involved is, whether the same is a a common cart track or the exclusive cart track of the first respondent. The learned District Munsif Court, Tiruchengode had appointed an Advocate Commissioner, who had visited the property and submitted a very detailed report, along with the plan. The respondents/defendants have filed their objection to this report on 28.10.2020 and thereafter come forward with an impugned petition.

5. In the affidavit filed in support of the petition, the Revision petitioner would seek to have the earlier report

scrapped, on the ground that Commissioner has in his report given findings regarding the nature of possession and enjoyment of the properties by the parties. It would also prove the bias on the part of the Commissioner. The Commissioner was not issued the warrant for reporting on the mode of enjoyment and nature of enjoyment of the said properties. For these reasons, the Advocate Commissioner's report filed earlier was sought to be scrapped.

6. The plaintiff had filed a counter inter-alia contending that the Commissioner had been appointed only at the instance of the Revision petitioners. The plaintiffs have clearly set out that the Commissioner has only noted down the physical features as requested on site and had not exceeded the scope of the warrant and therefore there is no necessity to scrap the report. The learned learned District Munsif Court, Tiruchengode after hearing the parties was pleased to dismiss the said application. The learned Judge has also observed that the Revision petitioner had filed his objections to the report and it is open to the petitioner to cross-examine the Advocate Commissioner on his report. Aggrieved by this order, the Revision petitioner is before this Court.

7. Heard the Counsels on the either side. The basic objection to the order appears to be that the learned District Munsif Court, Tiruchengode has not perused the report properly. The report would show the nature of the pathway and the differences in the pathway at various places. That apart the report also states how the various parties are using this pathway and the purpose for which it has been used and which according to the learned Counsel exceeds the scope of the warrant. The Revision petitioner has already filed their objections to the Commissioner report and the learned District Munsif Court, Tiruchengode has rightly observed that these objections can be considered by putting the Commissioner into box and questions could be posed by the Revision petitioner on the report and there is no necessity to scrap the report. Further the objection itself does not make out a reason for scrapping the report. The Commissioner has noted down the property as it stands and has noted down the nature thereof because he had been entrusted with the said duty as per the warrant. The defendants cannot object to the execution of the warrant by the Advocate Commissioner, as directed by the Court. This is not a case of gathering evidence, and on the contrary puts in perspective the nature of the properties and the changes in its topography at different places.

8. Therefore, I do not see any reason to disagree with the well considered order of the learned District Munsif Court, Tiruchengode and consequently, the Civil Revision Petition

stands dismissed. The connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gd

To

The District Munsif Court,
Tiruchengode.

+1cc to Mr.N.S.Suganthan, Advocate, S.R.No.7949
+1cc to Mr.N.Manoharan, Advocate, S.R.No.7894

C.R.P.NO.3076 OF 2021

PL(CO)
PBS/04/03/2022