



WEB COPY



CRP No. 4073 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.11.2023

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4073 of 2023
and
CMP.No.24929 of 2023

1.Subramanian
2.Paramasivam

... Petitioners

Versus

1.Duraisamy
2.Subraani

... Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and final order dated 15.06.2023, made in IA.No.10 of 2023 in O.S.No.79 of 2019, passed by the learned District Munsif, Rasipuram.

For Petitioners : Mr. B.Jawahar

For R1 : Mr. T. L.Thirumalaisamy

ORDER

The petitioner has filed this petition to set aside the fair and final order dated 15.06.2023, made in IA.No.10 of 2023 in O.S.No.79 of 2019, passed by the learned District Munsif, Rasipuram.



CRP No. 4073 of 2023

2. Heard Mr. B.Jawahar, learned counsel for the petitioners and Mr.T.L.Thirumalaisamy, learned counsel for the 1st respondent and perused the materials available on record.

3. Before the trial Court the petitioners / plaintiffs have filed a suit in O.S.No.79 of 2019 for the relief of bare injunction and other consequential reliefs. During the pendency of the suit, the plaintiffs have filed an I.A.No.10 of 2023, to appoint a Commissioner to inspect the schedule mentioned property, particularly to note down the existence of cart track in the suit property. On hearing both sides, the learned trial Judge dismissed the IA, based on the judgment of this Court ***in Chandrasekharan Vs. Doss Naidu, reported in 2005(3) MLJ 473,***

“Though appointment of Advocate – Commissioner was sought for under the pretext of noting down the physical features, indirectly it was only to find out the factum of possession. As the material issue involved in the suit relating to the nature of possession and lawful right of the parties, it was held that the material issue of determining the possession cannot be left to an Advocate Commissioner.”

Aggrieved the said order, the petitioners / plaintiffs have preferred this Civil Revision Petition.



4. The learned counsel for the revision petitioners submitted that suit property is the cart tract, which was used by the petitioners for ingress and egress into their properties. The defendants reduced the width of the cart tract, hence there is a dispute between them, which resulted for filing of the said suit. He further submitted that the respondents admitted the existence of the cart track, but disputed its width, they alleged that the width is only 9 feet not 15 feet as claimed by the plaintiff. Hence the petitioners filed an application for appointment of Advocate Commissioner to note down the physical features of the cart track.

5. The learned counsel for the respondents raised strong objection to appoint Advocate Commissioner in order to prove the existence of cart track in the suit property. He further submitted that the learned trial Judge rightly concluded and dismissed the I.A.No.10 of 2023 which needs no interference and prays to dismiss this Civil Revision petition. As per the document, plaintiffs are entitled 9 ft. more than they were not entitled even as per the plaint averment in Para 7(a) plaintiffs have contended that there was two path way belongs to the each party was merged and enjoyed as one pathway. As on date 15 ft. pathway is existence that averments was totally denied by the defendants stating that no such merge was taken place in order to extend the



CRP No. 4073 of 2023

path way, the plaintiffs have come forward with false claim. In fact, they are claiming right in the path way what it was allotted with original parent document, therefore they denied the existence of 15 ft. by way as claim by the plaintiffs. Therefore, they filed application to appoint Advocate Commissioner.

6. Considering both side submissions, the I.A.No.10 of 2023 was dismissed by the learned trial Judge holding that as the plaintiffs have approached the Court for not to cause interference, by way of permanent injunction against the defendants. At the time of posting the case in special list the petitioners come with an application to appoint the Advocate Commissioner as such is not acceptable. Moreover through the Commissioner's report they have not entitled to collect the evidence as a plaintiffs wants to prove their case. Accordingly, dismissed. Hence, they preferred the Civil Revision Petition.

7. The learned counsel for the revision petitioners submitted that in respect of enjoyment of the pathway as on date 15 ft. path way is existence by the defendants denied the said extent and also cause interference. Hence, necessity arose for the suit. Even after filing of the suit, as per the defendants



CRP No. 4073 of 2023

existent of 15 ft path way is totally denied, therefore to prove the physical features filed an application to appoint Advocate Commissioner, but the learned trial Judge without appreciating the application erroneously dismissed.

8. On seeing the facts that the suit property is 15 ft. path way and to prove the same the petitioners wants to appoint Advocate Commissioner to note down the physical features and to find out whether any alternative pathway is available to the plaintiffs, to that extent, they come forward with the application. Without considering the fact, the learned trial Judge erroneously dismissed the application, therefore this Court is inclined to set aside the finding rendered by the learned trial Judge in I.A.No.10 of 2023 in O.S.No.79 of 2019 and the I.A is allowed.

9. However, the learned trial Judge is directed to appoint the Advocate Commissioner within a period of three weeks from the date of receipt of a copy of this order and to produce the report within a period of 4 weeks from the date of appointment and thereafter the trial Judge is directed to proceed with the matter as per manner known to law.



WEB COPY



CRP No. 4073 of 2023

T.V.THAMILSELVI, J.

ri

10. Accordingly, this Civil Revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.11.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

ri

To

1. The District Munsif, Rasipuram.
2. The Section Officer,
VR-Section, High Court of Madras.

Civil Revision Petition No.4073 of 2023
and
CMP.No.24929 of 2023