



CRP No. 4150 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2023

CORAM :

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

Civil Revision Petition No.4150 of 2023

and

CMP.Nos.25337 & 25343 of 2023

Sundaram @ A.Sundaran

... Petitioner

Versus

1.S.Ramasamy

2.M.Vinoth Kumar

3.R.Mageswari

... Respondents

Civil Revision Petition filed Under Section 227 of Constitution of India, praying to set aside the order made in I.A.No.5 of 2023 in O.S.No.16 of 2023 dated 23.09.2023 on the file of the District Munsif Court, Sankari.

For Petitioner : Mr. M.Venkadesh Kumar

ORDER

The petitioner has filed this petition to set aside the order made in I.A.No.5 of 2023 in O.S.No.16 of 2023 dated 23.09.2023 on the file of the District Munsif Court, Sankari.

2. Heard, Mr. M.Venkadesh Kumar, learned counsel for the petitioner and perused the materials available on record.



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WEB COPY 3. Before the trial Court the petitioner / plaintiff has filed a suit in O.S.No.16 of 2023 for the relief of permanent injunction and other consequential reliefs. On pending of the suit, the defendants have filed an I.A.No.5 of 2023, to appoint an Advocate Commissioner to inspect the schedule mentioned property, particularly to note down the existence of cart track runs in between the suit property with the breadth of 15 feet and length of 750 ft. and directing him to file his report with plan. On hearing both sides, the learned trial Judge, appointed Advocate Commissioner to note down the physical features and existence of cart track in the suit property and also directed the Advocate Commissioner to produce the report on or before 22.11.2023. Aggrieved the said order, the petitioner / plaintiff has preferred this Civil Revision Petition.

4. The learned counsel for the revision petitioner submitted that there is no Government records to show that there is existing pathway as claimed by the defendants, now taking advantage of the appointment of Advocate Commissioner they farming new pathway for which they are not entitled. Based on the 2001 sale deed, as per the written statement, the defendants claiming that there is a cart tract runs between the suit property with an extent



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of breadth 15 feet and length 750 ft., to note down the physical feature, they were seeking permission of the Court to appoint Advocate Commissioner.

Accordingly, Commissioner was appointed. He further submitted that, without proper revenue records, the Commissioner simply to note down the physical feature of the property at the instance of the defendants, as such as not permissible one.

5. Admittedly, the suit was filed by the plaintiff, in the suit the defendants have filed I.A.No.5 of 2023, seeking the Court to appoint an Advocate Commissioner to prove the existence of cart track in the suit property. Accordingly, the Commissioner was appointed, but admittedly no Surveyor was assisted the Commissioner. When the dispute is with regard to the path way as per the FMD relied by the plaintiff, the same has to be proved by the plaintiff himself.

6. Since, the Advocate Commissioner was already appointed there was a controversy in the order of the Court. This Court directs the learned trial Judge to appoint a new Advocate Commissioner to measure the property and also to note down the physical features and the existence of the cart track in the plaint schedule property, with the help of the Taluk Surveyor.



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T.V.THAMILSELVI, J.

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

22.11.2023

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

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To

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

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