



CRP (MD) No.1607 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	24.07.2023
Pronounced on	15.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1607 of 2023

and

CMP(MD)No.7884 of 2023

1.Rajaram

2.Jeyalakshmi

3.Elangovan

... Petitioners

Vs.

1.Vaidegi

2.Shanthanalakshmi

3.Selvaraj

4.Jeyanthi

5.Amutha

6.Murugan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 15.06.2023 made in I.A.No.1 of 2023 in O.S.No.10 of 2023 on the file of the District Munsif Court, Theni.



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For Petitioners : Mr.C.Jegananthan

For R1 & R2 : Mr.M.Kannan

ORDER

This revision is preferred as against the order passed in I.A.No.01 of 2023 in O.S.No.10 of 2023, dated 15.06.2023 on the file of the District Munsif Court, Theni.

2. The above suit in O.S.No.10 of 2023 was filed by the respondents 1 and 2/plaintiffs for the relief of declaration of title and permanent injunction and also mandatory injunction in respect of the first schedule in the suit property. During the pendency of the suit, the respondents 1 and 2 filed an application for appointment of an Advocate Commissioner in I.A.No.01 of 2023 and the same was allowed by the trial Court. Aggrieved by this, the revision petitioner/defendants have preferred the above revision by stating that the respondents 1 and 2 are claiming a pathway in Survey Nos. 193/3H, 193/3I and 193/3J in the southern side. It is further submitted that the said land is the patta land as per the revenue records and it is not a



common pathway and the same is used by the revision petitioners and the respondents 3 to 6 as their own pathway. His further submission is that as per the revenue records, the said land is classified as patta land belonging to the petitioners and the respondents 3 to 6 and they are in exclusive possession and enjoyment of the same. The FMB clearly shows that the said land is a patta land and there is no common pathway earmarked. The respondents 1 and 2 are illegally claiming the said pathway as common pathway without any documents to substantiate the same. However, the trial Court, without considering the above facts, mechanically allowed the the above application by appointing an Advocate Commissioner, which is liable to be set aside.

3. The learned counsel for the petitioners would further submit that Advocate Commissioner cannot be appointed for collecting evidence to prove the possession. By quoting the decision case in ***R.Sathya Narayana Rao and three others Vs M.K.Manoharan @ K.Manoharan and another*** reported in ***2003 (3) L.W 787***, he would contend that when a Commissioner has been appointed unnecessarily and when the trial Court has passed that order without taking into consideration the pleadings in the case, and without



considering the fact whether such an appointment of Advocate Commissioner is necessary, it can certainly be said that the Court has acted illegally. The learned counsel also relied upon the decision rendered in **Muthusamy Gounder vs Mylsamy Gounder** reported in **2006 (4) LW 522**, in which it is held as follows:-

The lower Court has gone beyond the scope of the powers under Order 26 Rule 9 and has exceeded in its jurisdiction. Since the Revenue Officials have already demarcated the area and fixed stones dividing the property of the petitioner and the respondent, no purpose will be served in inspecting the property with the help of a surveyor to note down the physical features in the suit for permanent injunction. He also made a reference to the order passed in CRP(MD) No.26 of 2019 in support of his contention.

4. On the other hand, the learned counsel for the respondents 1 and 2 would submit that being a suit for declaration and permanent injunction and for mandatory injunction to remove the alleged encroachment made by the petitioners, it is necessary to appoint an advocate commissioner for which it



has been sought for. He would further contend that the report of the Advocate Commissioner would certainly assist the Court to have an effective adjudication of the dispute between the parties and therefore, the appointment of Advocate Commissioner to find out the existence of the pathway, cannot be said to prove the possession. Since there is obstruction in the suit pathway, the respondents 1 and 2/plaintiffs have come forward with the application for appointment of Advocate Commissioner. He would further submit that the report of the Commissioner would definitely enable the Court to come to the conclusion regarding the existence of pathway. To support his contention, he has relied upon the orders passed by this Court in **CRP(MD) Nos.1169 of 2017, 3818 of 2014 and 3062 of 2017.**

5. Heard on both sides and records perused.

6. In I.A.No.1 of 2023, the respondents 1 and 2 / plaintiffs prayed for appointment of Advocate Commissioner to find out the encroachment made by the petitioners/defendants in the common pathway. To find out whether there is an encroachment in the pathway it is necessary to appoint an advocate



commissioner and his report would definitely assist the Court to have an effective adjudication of the dispute between the parties, since it is case of the respondents 1 and 2/plaintiffs that the petitioners/defendants have encroached upon the pathway by putting up illegal constructions. Therefore, the report of the Commissioner would help the Court to come to a conclusion regarding the encroachment that has been made on the common pathway. Since it is a suit to declare the right of the plaintiffs in the common pathway and for permanent injunction restraining the defendants from obliterating the pathway and for mandatory injunction directing the defendants to remove the obstructions and for recovery of possession of the pathway, to know the existence of pathway in the land and to prove the encroachment made in the pathway, appointment of an Advocate Commissioner is absolutely necessary.

7. As per the settled law, where there is an allegation of encroachment of land, an Advocate Commissioner can be appointed for local investigation, as mere oral evidence will not aid either party to decide the issue of encroachment, such appointment cannot be said to be for collection of evidence as the object of local investigation itself would assist the Court to



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resolve the dispute between the parties, especially, when the plaintiffs are contending that the defendants are trying to obliterate the physical features in the disputed area. In fact, it enables the Court to understand the physical features existed on the date of suit and subsequent obliteration can be known easily by the Court in the course of trial. Therefore, this Court finds no infirmity in the order passed by the trial Court and the civil revision petition is liable to be dismissed.

8. In the result, this Civil Revision Petition is dismissed and the order passed in I.A.No.1 of 2023 in O.S.No.10 of 2023 on the file of District Munsif Court, Theni, dated 15.06.2023, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

15 .09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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K.GOVINDARAJAN THILAKAVADI

cp

To

The District Munsif,
Theni.

order made in
CRP (MD) No.1607 of 2023

15.09.2023

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