



CRP.No.800 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 12.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.800 of 2024

and

CMP.No.3946 of 2024

1.K.M.Palanisamy

2.Premavathi

...

Petitioners

Vs.

1.Kalyani

Kannamal (deceased)

2.The District Collector,
District Collector Office,
Sampath Nagar, Erode District.

3.The Revenue Divisional Officer,
Revenue Divisional Office,
Gobichettipalayam, Erode District.

4.The Tahsildar,
Tahsildar Office,
Gobichettipalayam,
Erode District.

5.Subramaniam

6.Kathirvel

...

Respondents



CRP.No.800 of 2024

Prayer: Civil Revision Petition has been filed under Article 227 of Constitution of India to call for the records and proceedings of impugned order dated 07.12.2023 in I.A.No.5/2023 in O.S.No.195/2010 passed by the learned District Munsif, Gobichettipalayam and set aside the same as illegal, invalid and nullity.

For Petitioners : Mr.D.Kannan

For Respondent : Mr.P.Saravana Sowmiyan
No.1

For Respondent : Mr.C.Sathish
Nos.2 to 4 Government Advocate

ORDER

This civil revision petition has been filed to set aside the impugned order dated 07.12.2023 in I.A.No.5/2023 in O.S.No.195/2010 passed by the learned District Munsif, Gobichettipalayam.

2.The learned counsel appearing for the petitioners submitted that the petitioners are the second and third defendants in O.S.No.195 of 2010. The first respondent/plaintiff filed the suit against the petitioners as well as the other respondents for declaration and absolute



CRP.No.800 of 2024

WEB COPY

owner of the suit schedule properties vide settlement dated 20.06.1989 and for permanent injunction restraining the defendants. During examination of PWs1 and 2, the first respondent/plaintiff speaks about the 12' Cart Track at survey Nos.23/4 and 24. There is no such 12' Cart Track as stated by the plaintiff, therefore, to note down the physical features of the plaint schedule properties, the petitioners/first and second respondents filed an application in I.A.No.5 of 2023 for appointment of an Advocate Commissioner but the trial Court failed to consider same dismissed the application, against which, the present civil revision petition has been filed.

3.Mr.P.Saravana Sowmiyan, the learned counsel appearing for the first respondent/plaintiff and Mr.C.Sathish, learned Government Advocate appearing for the respondents 2 to 4 objected to allow the civil revision petition and pleaded to dismiss the same.

4.On perusal of the records, it reveals that the first respondent is



CRP.No.800 of 2024

WEB COPY

the plaintiff in O.S.No.195 of 2010 on the file of the District Munsif Court, Gobichettipalayam. She filed the suit against the revision petitioners as well as the other respondents for declaration, permanent injunction and other reliefs. Further, on perusal of the affidavit, it reveals that in the cross examination, PWs1 and 2 speak about 12' Cart track running between survey Nos.23/4 and 24 but there is no 12' cart track as deposed by PWs1 & 2. To note down the physical features of the plaint schedule properties, the revision petitioners sought an appointment of Advocate Commissioner before the trial Court. Considering the prayer in the plaint and the issues involved in this case, no warrant to note down the physical features of the plaint schedule properties, hence, the application was dismissed by the trial Court. The main prayers are to declare the settlement deed dated 20.06.1989 in favour of the plaintiff, the plaint schedule properties are owned by the plaintiff, she is in possession besides sought the relief of injunction against the respondents and also mandatory injunction to give a direction to the defendants 4 to 6 to delete the name of the first defendant in the patta 280. In the above factual background, it is not warrant to note down the physical features of the plaint schedule



CRP.No.800 of 2024

WEB COPY

properties. For that purpose, Advocate Commissioner need not be appointed. Apart from this, to find out, who is in possession of the properties, the Advocate commissioner is not competent to say, who is in possession. It has to be established to let in evidence before the Court and the Court has to adjudicate upon the evidence placed before the Court who is in possession. Therefore, the trial Court rightly dismissed the prayer for appointment of an advocate commissioner and there is no ground to interfere with the impugned order and I find no merit in the civil revision petition. Accordingly, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index:Yes/No
Internet:Yes/No
sms

12.03.2024

To

1.The learned District Munsif,
Gobichettipalayam.

Page 5 of 7



CRP.No.800 of 2024

WEB COPY

2. The District Collector,
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Sampath Nagar, Erode District.
3. The Revenue Divisional Officer,
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Gobichettipalayam, Erode District.
4. The Tahsildar,
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Erode District.

V.SIVAGNANAM, J.

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WEB COPY



CRP.No.800 of 2024

CRP No.800 of 2024
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CMP.No.3946 of 2024

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