



C.R.P.No.433 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.433 of 2023
and CMP.No.3637 of 2023

1.Shanthi
2.Amuda
3.Ilakkiya
4.Dandapani
5.Chinnadurai
6.Kanagaraj

... Petitioners

Vs

1.Parthiban
2.Barathiraja

3.The District Collector
Ariyalur.

4.The Tahsildar
Aalathur Taluk
Perambalur District.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the petition docket order dated 13.09.2022 made in I.A.No.04 of 2022 in O.S.No.171 of 2022 passed by the District Munsif Court, Perambalur and allow this civil revision petition.



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For Petitioners : Ms.M.Abbiraami
for Mr.R.Kuyilan

For Respondents : Mr.V.Illanchezhyan for R1, R2
Dr.S.Suriya
Additional Govt. Pleader for R3, R4

ORDER

This civil revision petition arises against the order passed by the learned District Munsif at Perambalur in I.A.No.4 of 2022 in O.S.No.171 of 2022. The respondents 1 and 2 herein are the plaintiffs.

2. The suit in O.S.No.171 of 2022 is for declaration that the plaintiffs are entitled to utilise the suit cart track and for consequential relief of injunction restraining the defendants from interfering with the usage of the same and also for other reliefs. This suit was presented on 29.08.2022. Thereafter, the plaintiffs have taken out an application in I.A.No.4 of 2022 for appointment of an Advocate Commissioner to visit the suit schedule mentioned property and note down the existence of cart track and passage.



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3.The learned District Munsif was pleased to appoint an Advocate Commissioner vide order dated 13.09.2022. Challenging the same, the present civil revision petition is filed by the defendants.

4. Heard Ms.M.Abbiraami for revision petitioners/defendants and Dr.S.Suriya, learned Additional Government Pleader for the State.

5. Ms.M.Abbiraami would submit that the entire purpose of appointment of Advocate Commissioner is to fish out the evidence and also to create records in order to substantiate the case of the plaintiffs, for which purpose, appointment of an Advocate Commissioner is unnecessary. Therefore, she seeks the revision to be allowed by setting aside the order of the learned District Munsif in the said I.A.

6. Dr.S.Suriya, learned Additional Government Pleader would submit that the official respondents would abide by the directions passed by this Court in the present revision.

7. The power to appoint an Advocate Commissioner exparte is always



available to the civil Court. The only condition is that prior to the visit, the Advocate Commissioner, who has been appointed exparte, should issue notice to the defendants in the suit.

8. In the facts of the present case, the plaintiffs fear that the defendants/civil revision petitioners would interfere with their right of usage of cart track. In fact, if the cart track is obliterated pending the suit, it would only create hardship for the plaintiffs. If an Advocate Commissioner is appointed and he visits the suit property after giving due notice to both sides, conducts inspection, and submits a report that there exists a cart track, then this would assist the trial Court during the course of trial. In case, he submits the report that no such cart track is in existence, then it would only strengthen the case of the defendants. Either way, they will always have enough time to file their objections once the report is submitted. In addition, the defendants have an option to cross-examine the Advocate Commissioner during the course of trial.

9. The learned trial Judge, in the facts and circumstances of the case, felt that by appointing an Commissioner, it would come to light whether there



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is a cart track and passage. This certainly is within the jurisdiction of the learned trial Judge to do so. Therefore, I do not find any reason to interfere with the order passed by the learned District Munsif, Perambalur in I.A.No.4 of 2022 in O.S.No.171 of 2022 dated 13.09.2022.

10. Needless to add, before the Advocate Commissioner visits the suit property and submits his report, he shall issue notice to the respondents. The respondents are always at liberty to file their objections to the Commissioner's report and shall examine the Advocate Commissioner during the course of trial.

11. With the above observations, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.07.2024

Index:Yes/No
Neutral Citation : Yes / No
Speaking order / Non-speaking order
ds



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V.LAKSHMINARAYANAN,J.

ds

To:

- 1.The District Munsif, Perambalur.
- 2.The Section Officer,
VR Section, High Court, Chennai.

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