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C.R.P.(PD).No.1037 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1037 of 2021
and CMP.No.8239 of 2021

Govindammal

... Petitioner

vs.

Balakrishnan (died)

1.Lakshmi

2.Vasantha @ Ponniammal

3.The Government of Tamil Nadu,
represented by the Collector,
District Collector Office,
Salem – 636 001.

4.The Tahsildar,
Salem – 636 001.

5.The Commissioner,
Salem Municipal Corporation,
Salem Corporation,
Salem – 636 001.

6.The Assistant Engineer,
TANGEDCO,
Alagapuram Distribution,
Salem – 636 016.

7.Jayalakshmi

8.Sampathkumar

9.Kanchanakumar

10.Illayarajan

11.Illaya Muthammal

... Respondents



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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 21.12.2020 made in I.A.No.1 of 2020 in I.A.No.415 of 2018 in O.S.No.872 of 2013 passed by the II Additional District Munsif Judge, Salem and allow this Civil Revision Petition.

For Petitioner	: Mr.D.Gopinathan
For Respondents	: Ms.N.Devi Standing counsel for Salem Corporation for R5 Mr.S.T.Raja Senior Counsel for TANGEDCO for R6 Mr.V.Jeevagiridharan Additional Government Pleader for R3 and R4 M/s.P.Veena Suresh for R7 and R8 Not ready in notice R1 and R2 No appearance for R9 to R11

ORDER

The Civil Revision Petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioners seeking to measure the property with the help of surveyor.



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2. The petitioner herein filed a suit seeking declaration of his right of pathway in A, B, C, D cart track in S.No.59/2A2A to reach the main road as denoted in the plaint plan and for direction to respondents to remove superstructures put up by them in the suit A, B, C, D cart track.

3. Earlier at the instance of the petitioner, an Advocate Commissioner was appointed and he visited the property and noted down the physical features. In the report submitted by the Advocate Commissioner, it was mentioned by him that the pathway referred to by the petitioner could not be identified on ground and in order to identify the same, the services of Surveyor and Village Administrative Officer were required.

4. Thereafter, the petitioner herein filed the instant application seeking appointment of Advocate Commissioner for local inspection with qualified Surveyor. The said application was dismissed by the trial Court on the ground that the petitioner has to establish the existence of the suit cart track based on the documents filed by him and in the absence of any reference in the documents filed by the petitioner with regard to the suit cart



track, the instant application filed by him seeking appointment of Advocate Commissioner with the assistance of Surveyor cannot be allowed. Aggrieved by the same, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner by taking this Court to plaint document Nos.1 and 2 submitted that the cart track mentioned by the petitioner was referred to in the plaint documents and the Court below erroneously observed that there was no reference about cart track in the documents filed by the petitioner.

6. The suit is for declaration of petitioner's right of way and for mandatory injunction to the respondents to remove the construction put up by them in the suit cart track. Therefore, the identification of the suit cart track is the vital issue involved in this suit. Unless the suit cart track is identified, the controversy between the parties cannot be adjudicated upon by the trial Court. Earlier, the Advocate Commissioner filed a report stating that in order to identify the cart track on ground, services of Surveyor and Village Administrative Officer are required.



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7. In such circumstances, the Court below could have re-issued warrant to very same Advocate Commissioner to visit the suit property with the assistance of Surveyor. However, the said application was closed and the same necessitated the petitioner to file the instant application for appointment of Advocate Commissioner.

8. In the facts and circumstance of the case, this Court feels that appointment of fresh Advocate Commissioner is not at all warranted. However, the trial Court is directed to re-issue the warrant to the earlier Advocate Commissioner to conduct local inspection with the assistance of Surveyor and Village Administrative Officer. The Advocate Commissioner and Surveyor shall be directed to measure the suit properties with reference to the documents produced by the parties and report about existence of the cart track referred to in the plaint.



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9. Accordingly, the Civil Revision Petition stands disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

27.02.2024

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

WEB COPY The II Additional District Munsif Judge,
Salem.



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S.SOUNTHAR, J.

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