



WEB COPY



C.R.P.No.1322 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No.1322 of 2020

and

C.M.P. No.7199 of 2020

1. Paramasivam S/o. Marimuthu Gounder
2. Yuvaraj S/o. Paramasivam

... Petitioners

vs.

1. Ramasamy Gounder S/o. Subraya Gounder
2. Marimuthugounder S/o. Kandappa Gounder

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 30.08.2019 passed by the learned Additional District Munsif, Tiruchengode in I.A. No.420 of 2017 in O.S. No.210 of 2017.

For Petitioner : Mr. R. Marudhachalamurthy

For Respondents : Mr. N. Manokaran [for R1]
R2 – Not ready in notice.

ORDER

The Civil Revision Petition is filed challenging the order passed by the



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Trial Court dismissing the application filed by the petitioners seeking re-issuance of warrant to the Advocate Commissioner.

2. The 1st respondent herein filed a Suit seeking declaration that he is entitled to use and enjoy the Suit cart track to reach his land and house in S.No.9/2H and 10/2 and for consequential injunction restraining the petitioners and 3rd respondent from interfering / disturbing from peaceful possession and enjoyment of the cart track.

3. At the instance of the 1st respondent, earlier an Advocate Commissioner was appointed and he filed a report noting down the existence of cart track in S.Nos.10/2, 12/3 and other survey numbers.

4. The petitioners herein filed objection to the Advocate Commissioner's Report stating that there was no cart track in S.No.12/3 and the cart track is available only in S. Nos.12/1, 11/2A and 12B. It is also asserted by the petitioners that there is no cart track in S.No10/2 as mentioned in the Advocate Commissioner's report.



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WEB COPY 5. Now the petitioners filed the instant application for re-issuance of warrant to the Advocate Commissioner to measure the suit property and to file a report noting down the cart track in S. Nos.9 and 10 and also to file a report touching all aspects with regard to the objection raised by the petitioners. The said application was dismissed by the Court below on the ground that the existence of the cart track has to be proved by the respective parties through documentary evidence and the present application is only an attempt to drag on the proceedings.

6. It is not in dispute that the right of the respective parties and existence of the cart track can be proved by producing documentary evidence. In the case on hand, already an Advocate Commissioner was appointed at the instance of the 1st respondent. He filed a report mentioning the existence of cart track in S. Nos.12/3 and 10/2. The petitioners filed their objection to the Advocate Commissioner's report disputing the findings of the Advocate Commissioner about existence of cart track in S.Nos.12/3 and 10/2. Now the petitioners want to re-issue warrant to substantiate their objection with regard



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to the non-existence of cart track in S. Nos.12/3 and 10/2.

WEB COPY 7. Therefore if the warrant is re-issued to the very same Advocate Commissioner, he will be in a position to find out the existing physical features in S. Nos.12/3 and 10/2. Therefore, the impugned order is hereby set aside and the Trial Court is directed to re-issue warrant to the very same Advocate Commissioner. The Advocate Commissioner shall identify the Survey Nos.12/3 and 10/2 with the help of Surveyor and note down the physical features with regard to the existence of cart track in 12/3 and 10/2.

8. With this direction, the Civil Revision Petition stands allowed. Having regard to the fact that the Suit is of the year 2017, the Trial Court shall ensure the process of local inspection by the Advocate Commissioner is completed within a period of **twelve (12)** weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

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

The Additional District Munsif, Tiruchengode



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S.SOUNTHAR, J.

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