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C.R.P.(PD).No.3278 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3278 of 2024
and C.M.P.No.17536 of 2024

1. Eswari
2. Ramesh

.. Petitioners

Versus

Karthick

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order, dated 28.06.2024 made in I.A.No.03 of 2024 in O.S.No.30 of 2024 on the file of the District Munsif Court, Anthiyur by allowing this Civil Revision Petition.

For Petitioners : Mr.C.Munusamy

ORDER

This Civil Revision Petition arises against the order passed by the learned District Munsif at Anthiyur in I.A.No.3 of 2024 in O.S.No.30 of 2024.



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2. O.S.No.30 of 2024 is a suit for permanent injunction restraining the petitioners/defendants from in any way interfering with the respondent's/plaintiff's right over a cart track which has been shown as the suit schedule mentioned property.

3. The case of the respondent/plaintiff is that his predecessor in title had purchased the property on 29.05.1979 which includes a cart track with an extent of 9 feet. The respondent/plaintiff had subsequently purchased the property on 02.07.2014 and even in the said document, the right to use the pathway has been transferred in his favour. As the petitioners/defendants are interfering with the possession of the property, he came forth with the suit.

4. On being served with the summons, the first petitioner/defendant filed a detailed written statement denying the existence of the pathway as sought for by the respondent/plaintiff. He would plead that the respondent/plaintiff has an access through an alternate pathway, and not the one pleaded by him in the plaint.



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5. I.A.No.3 of 2024 was filed along with the suit for the purpose of appointment of an Advocate Commissioner. After a counter had been filed in the said application, the Trial Judge exercised his discretion and appointed an Advocate Commissioner to visit the suit schedule mentioned property and submit a report. Against which, the present petition is filed.

6. Heard Mr.C.Munusamy, learned Counsel for the petitioners/defendants.

7. Mr.C.Munusamy would submit that if the document shows the existence of a pathway, then, it is the duty of the respondent/plaintiff to substantiate the same by way of reference to said document and he cannot file an application for appointment of an Advocate Commissioner. He would state that this is an attempt by the respondent/plaintiff to collect evidence and therefore, it is not sustainable. In support of the said argument, he relied upon *Sanjeev Kumar Vs. Rajaram and Anr., 2023 Supreme (Mad) 2288* and *Panneerselvam and Ors. Vs. Ramakrishnan, 2023 Supreme (Mad) 265*. He would state that in both the cases, this Court



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had held that an Advocate Commissioner cannot be appointed. Therefore, he would pray for admission of revision and an interim order.

8. I have carefully considered the submissions of Mr.C.Munusamy.

9. The facts of this case show that the respondent/plaintiff specifically pleads the existence of a cart track, by which, he has an access to a public road. He claims that this exists on the land right from 1979 onwards which had been transferred to him in the year 2014. Per *contra*, the petitioners/defendants have filed a specific written statement asserting that there is no such cart track, and the cart track, on the basis of which the respondent's/plaintiff's predecessor was in title and the respondent/plaintiff have been enjoying, runs over different area altogether. The dispute that arises in the case, which the Court has to answer is, on the very existence of the cart track.

10. The only way, in which, the Court can come to a conclusion on the existence of the cart track especially when there is a dispute on the



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identity or location of the cart track is by way of appointment of an Advocate Commissioner. He is the eyes and ears of the Court.

11. It is here that I have to refer to the two judgments cited by Mr.C.Munusamy. In **Sanjeev Kumari's** case (cited *supra*), the learned Judge came to a specific finding that there is no dispute regarding identity or location of the said property. Hence, the application for appointment of an Advocate Commissioner which was dismissed by the Trial Court, was confirmed by this Court. The same is the view that had been taken by the learned Judge in **Panneerselvam's** case (cited *supra*). However, a perusal of the plaint and written statement in this case, would show that there is a dispute on the identity as well as the lie of the pathway. This certainly cannot be proved by documents alone. In cases, such as this, a report of an Advocate Commissioner would assist the Court to arrive at a just conclusion.

12. With respect to the argument that the appointment of an Advocate Commissioner would amount to collection of evidence, it is contrary to Order XXVI Rule 10(2) of the Code of Civil Procedure. Under Order



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XXVI Rule 10, the report of an Advocate Commissioner is an evidence in the suit. The report of the Advocate Commissioner is not to satisfy the respondent/plaintiff or the petitioners/defendants, but, in order to elucidate the fact in issue that the Court would have to answer. The learned Trial Judge, in his discretion, has felt that an appointment of an Advocate Commissioner would help him at the time of disposal of the suit. I do not think that when a discretion has been exercised in accordance with Order XXVI Rule 9 of the Code of Civil Procedure, a ground for revision is made out.

13. Consequently, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The District Munsif,
Anthiyur.



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V.LAKSHMINARAYANAN, J.

grs

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