



C.R.P.No.2467 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2467 of 2021 and
C.M.P.No.18637 of 2021

Kannan

... Petitioner

Vs.

1.Raju
2.Mani
3.Rajeshwari
4.Velayudham

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 16.02.2021 passed in I.A.No.295 of 2018 in O.S.No.35 of 2018 on the file of the District Munsif Judge, Rasipuram.

For Petitioner : M/s.S.Senthil
For Respondent 1 to 4 : Mr.Thangavelu

ORDER

The civil revision petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner seeking appointment of Advocate Commissioner.



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2. The petitioner herein filed a suit for bare injunction restraining the respondents from interfering with his alleged right to use suit pathway ABCDEFG.

3. Pending the suit, the petitioner filed I.A.No.295/2018 seeking appointment of Advocate Commissioner to note down the physical features. In the affidavit filed in support of the petition, it was stated by the petitioner that appointment of Advocate Commissioner was absolutely necessary to establish the existence of 9 feet pathway in ABCDEFG portion.

4. The said application was dismissed by the Court below on the ground that appointment of Advocate Commissioner cannot be made to find out physical possession of the parties.

5. The learned counsel for the petitioner submitted that respondents in the counter affidavit mentioned the existence of alternate pathway to reach the house of the petitioner and hence, the appointment of Advocate Commissioner



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has become necessary.

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6. The petitioner herein has not filed a suit seeking declaration of his easementary right. He only sought for bare injunction to enjoy the suit property. If petitioner sought for declaration of easementary right, the existence of alternate pathway may be essential fact to decide the question of easementary right.

7. In the case on hand, the petitioner is only seeking right of enjoyment over the suit pathway. The petitioner has to independently establish his user of the pathway. The Advocate Commissioner cannot be appointed to find out the physical possession of the petitioner over the suit property. Hence, I do not find any illegality or irregularity in the order passed by the Court below.

8. With these observations, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

19.01.2024

Index : Yes / No

Internet : Yes / No

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S.SOUNTHAR, J.

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To
The learned District Munsif Judge, Rasipuram.

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