



WEB COPY



C.R.P.(PD).No.2743 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2743 of 2021

and

C.M.P.No.20034 of 2021

1.Selvakumar

2.Ravi

3.Annamalai @ Namnadu

4.Shanmugam

5.Nataraj

6.Chinnasamy

7.Marimuthu

8.Palaniammal

9.Raja

... Petitioners

VS

1.A.Anbalagan

1/8



C.R.P.(PD).No.2743 of 2021

2.The District Collector,
Salem, Collectorate, Salem-1,
Salem Taluk, Salem District.

3.The Tahsildar,
Vazhapadi Taluk Office,
Vazhapadi Bye-Pass Road, Vazhapadi Town,
Vazhapadi Taluk, Salem District.

4.The Revenue Divisional Officer, Salem
Collectorate, Salem-1,
Salem Taluk, Salem District.

5.The Revenue Inspector, Karipatti Firka,
Karipatti Village, Vazhapadi Taluk,
Salem District.

6.The Inspector of Police,
Law and Order, Vazhapadi Town,
Main Road, Vazhapadi Town,
Vazhapadi Taluk, Salem District.

7.The Sub-Inspector of Police,
Karipatti P.S. Law and Order, Karipatti Police Station,
Main Road, Karipatti Village,
Vazhapadi Taluk, Salem District.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Final Orders dated 14.09.2021 passed in I.A.No.5 of 2020 in O.S.No.193 of 2020 on the file of the II Additional Subordinate Judge (FAC) at Salem.



WEB COPY



C.R.P.(PD).No.2743 of 2021

For Petitioners : Ms.D.Jeevitha
for Mr.R.Nalliyappan

For R1 : Mr.K.Selvaraj

For R2 to R7 : Mr.C.Sathish
Government Advocate

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioners seeking appointment of Advocate Commissioner for local inspection and to note down the physical features with regard to the existence of 10 feet road in the suit property and the adjoining Survey Nos.107, 108, 181, 183, 186, 189, 109, 106, 105, 103 and 102 of Periyagoundapuram Village.

2. The 1st respondent herein filed a suit for permanent injunction restraining the petitioners/defendants from interfering with his peaceful possession and enjoyment of the suit property. Even in the plaint averment, it has been stated by the 1st respondent that defendants attempted to lay new pathway in the suit property. The same is mentioned as one of the cause of action for filing the suit for injunction.



C.R.P.(PD).No.2743 of 2021

WEB COPY 3. The petitioners herein filed an application in I.A.No.5 of 2020

seeking appointment of Advocate Commissioner for local inspection to note down the existence of road in between the property of the 1st respondent/plaintiff and other properties of the defendants. In the affidavit filed in support of said application, it has been stated by the petitioners that 1st respondent/plaintiff closed the road on 18.05.2020 by JCB and in respect of the same, the police complaint has already been lodged. The petitioners also laid a counter claim seeking direction to the 1st respondent to restore the 10 feet road as shown in the rough plan attached with the written statement. It is the claim of the petitioners that there is a 10 feet road from Periya Goundapuram Panchayat Office to Karaikadu Madhaiyan Temple on the south to enable the petitioners to reach their property.

4. The application filed by the petitioners has been resisted by the 1st respondent by filing a counter denying the very existence of 10 feet road claimed by the petitioners.



5. In view of the controversy between the parties with regard to the existence of 10 feet pathway/road, the best way to ascertain the same is appointment of Advocate Commissioner by local inspection. The physical features noted by the Advocate Commissioner with regard to the existence or non-existence of road would certainly help the Court to decide the real controversy in an effective manner. The Trial Court dismissed the application filed by the petitioner on the ground that Advocate Commissioner cannot be appointed for collection of evidence. The existence or otherwise of the road/pathway in the suit property can be easily found out by appointment of Advocate Commissioner by local inspection and the same will minimize both oral and documentary evidence to be let in the Trial Court. Therefore, I am of the view, the appointment of the Advocate Commissioner for local inspection will help the Court to decide the real controversy in a more comprehensive manner. Therefore, the impugned order passed by the Court below is set aside and the Trial Court is directed to appoint an Advocate Commissioner to inspect the suit property as prayed for in I.A.No.5 of 2020.



C.R.P.(PD).No.2743 of 2021

WEB COPY 6. Accordingly, the Civil Revision Petition stands allowed. No costs.

Consequently, the connected civil miscellaneous petition is closed.

05.01.2024

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

To

- 1.The II Additional Subordinate Judge (FAC),
Salem.
- 2.The District Collector,
Salem, Collectorate, Salem-1,
Salem Taluk, Salem District.
- 3.The Tahsildar,
Vazhapadi Taluk Office,
Vazhapadi Bye-Pass Road, Vazhapadi Town,
Vazhapadi Taluk, Salem District.
- 4.The Revenue Divisional Officer, Salem
Collectorate, Salem-1,
Salem Taluk, Salem District.
- 5.The Revenue Inspector, Karipatti Firka,
Karipatti Village, Vazhapadi Taluk,
Salem District.



C.R.P.(PD).No.2743 of 2021

6.The Inspector of Police,
Law and Order, Vazhapadi Town,
Main Road, Vazhapadi Town,
Vazhapadi Taluk, Salem District.

7.The Sub-Inspector of Police,
Karipatti P.S. Law and Order, Karipatti Police Station,
Main Road, Karipatti Village,
Vazhapadi Taluk, Salem District.



WEB COPY



C.R.P.(PD).No.2743 of 2021

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.2743 of 2021

05.01.2024