



C.R.P.No.3220 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.R.P.No.3220 of 2023

and C.M.P.No.19852 of 2023

Rukkumani

...Petitioner

vs.

1. Sadayappan

2. Rajavel

3. Thangarasu

4. Jeyanthi

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 25.07.2023 passed in I.A.No.7 of 2022 in O.S.No.304 of 2020 on the file of the District Munsif, Kumarapalayam, Namakkal District.

For Petitioner : Mr.J.Titus Enock

For Respondent : Mr.S.Suganthan

ORDER

This Civil Revision Petition is filed by the first defendant against the Order passed in I.A.No.07 of 2022 in O.S.No.304 of 2020 dated



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25.07.2023 on the file of the District Munsif, Kumarapalaya, Namakkal District.

2. Heard Mr.J.Titus Enock, learned counsel appearing for the petitioner and Mr.S.Suganthan, learned counsel appearing for the respondents.

3. The suit is filed for the following relieves to declare that the plaintiffs are entitled to use and enjoy D, E portion of the suit cart track, which runs in defendants land in Survey No.381/9 of Pallipalayam Village, with consequential relief of permanent injunction in favour of the plaintiffs against the defendant and his men by restraining them from in anyway disturbing the plaintiffs peaceful use and enjoyment of D, E portion of the suit cart track.

4. During the trial, after the examination of the first defendant, on behalf of the first defendant, an application under Order XVI Rule 1 of CPC seeking permission of the trial Court to examine the Village Assistant Officer and the Advocate Commissioner was filed. Upon consideration, the trial Court observed that, if at all the revenue documents have to be filed, those documents have to be procured from



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the Revenue Department and those documents have to be marked.

There is no details given in the affidavit and for what reason those witnesses have to be examined and chose to dismiss the petition. Hence, this revision petition is filed before this Court.

5. Mr.J.Titus Enock, learned counsel appearing for the petitioner would strenuously argue that, as the suit is filed for the relief of declaration of cart track, it is incumbent on the part of the petitioner to call the Village Administrative Officer in order to explain about the lie and location of the property. He would further aver that in order to further explain about the report of the Advocate Commissioner, it is necessary to examine the Advocate Commissioner who has visited the suit property and filed his report.

6. Mr.S.Suganthan, learned counsel appearing for the respondents would vehemently rather contend that the first defendant has not given any details for what reasons these witnesses have to be examined, and the trial Court has rightly taken note of the facts and chose to dismiss the petition.

7. The impugned order is passed under Order XVI Rule 1 of CPC.



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The suit is filed by the plaintiffs for declaration in respect of cart track. It is also learnt that at the instance of plaintiffs/respondents, an Advocate Commissioner was appointed and he has filed his report with plan.

8. Based on the aforesaid details, even the lie and location of the properties can be ascertained from the Advocate Commissioner, who had earlier visited the suit property and filed his report. What for the Village Administrative Officer is sought to be examined is not explained in the petition. Therefore, in the given circumstances, examination of the Advocate Commissioner by the first defendant would definitely serve the purpose. Accordingly, this revision petition is allowed to a limited extent of permitting the petitioner to examine the Advocate Commissioner. Accordingly, this Civil Revision Petition is ordered. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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R.KALAIMATHI, J.
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