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C.R.P.No.3866 of 2022
and C.M.P.No.20287 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P.No.3866 of 2022
and C.M.P.No.20287 of 2022

R.Vimalraj

...

Petitioner

versus

1.Muthusamy

2.Palanivel

3.Praveenkumar

4.Bharathkumar

5.The District Collector,
District Collectorate Office,
Namakkal District - 637 003.

6.Revenue Divisional Officer,
Collectorate Office,
Namakkal - 637 003.

7.Tahsildhar,
Tahsildhar Office,
Rasipuram Taluk,
Namakkal District - 637 408.

...

Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order passed in I.A.No.2 of 2022 in O.S.No.39 of 2017 dated 26.09.2022 on the file of the District Munsif Court, Rasipuram.



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For Petitioner : M/s.J.Prithivi
for Mr.S.Kaithamalai Kumaran
For Respondent Nos.1 & 2 : Mr.N.Manokaran
For Respondent Nos.3 & 4 : No Appearance
For Respondent Nos.5 to 7 : Mr.T.Arun Kumar
Additional Government Pleader

ORDER

This Civil Revision Petition has been preferred as against the order passed in I.A.No.2 of 2022 in O.S.No.39 of 2017 on the file of the District Munsif Court, Rasipuram, wherein the petitioner herein, being the plaintiff, has filed an application before the trial Court, for appointment of a Commissioner to note down the physical features under Order 26 Rule 9 of C.P.C. The application was dismissed by the trial Court on 26.09.2022.

2. According to the petitioner, he has filed the main suit in O.S.No.39 of 2017 for the relief of declaration and permanent injunction in respect of the suit properties as against the respondents / defendants. The suit properties originally belonged to the grandfather of the petitioner, Sengoda Gounder, through a Sale Deed in the year 1965. After the purchase of the properties, in the year 1969, a metal road was formed through the suit



properties in Survey Nos.67/1, 65/4 and 64/1 to reach Kattanachampatty Village.

3. After the formation of the metal road, the properties situated on the eastern side of the said road in S.F.No.67/1, an extent of 25 cents, were allotted to Sengoda Gounder and S.F.Nos.65/4 and 64/1, which are situated on the northern side of the east-west metal road, an extent of 10 cents, were allotted to the first defendant's father. Therefore, both properties were referred to by mentioning the above mentioned road as their boundaries. As such, the property situated on the eastern side of the north-south metal road in S.F.No.67/1, an extent of 25 cents, was enjoyed by the Sengoda Gounder and after his demise, his successors have been enjoying the properties. Similarly, the lands situated on the northern side of the east-west metal road in S.F.Nos.65/4 and 64/1 an extent of 10 cents were enjoyed by the defendants predecessors and based on their enjoyment, UDR patta was also granted in the name of the respective parties.

4. On 20.08.2010, the petitioner's father and sisters executed a registered Release Deed in favour of the petitioner and thereafter, the



petitioner's name was also recorded in the revenue records. The respondents / defendants have no right over the properties. In the written statement, the respondents / defendants have stated that the suit properties are under their enjoyment and that there is no north-south pathway is in existence. Therefore, in order to show that there is a pathway and note down the physical features, the appointment of a Commissioner is very essential. Before the trial Court, the petitioner filed an application for the appointment of a Commissioner and the same was dismissed by the trial Court. Therefore, the order of the trial Court is liable to be dismissed.

5. Before the trial Court, the respondents 1 to 4 were set *ex parte* and they have not filed any counter. Before the trial Court, no oral or documentary evidence is adduced by either side. The trial Court after considering the records, dismissed the application. Challenging the said order, the present Civil Revision Petition has been filed by the petitioner.

6. The learned counsel appearing for the petitioner would contend that the petitioner is the plaintiff in the main suit and he has filed the suit for the relief of declaration and permanent injunction. The petitioner's



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grandfather purchased the suit properties through a Sale Deed in the year 1965 and thereafter, a metal road was formed through the suit properties and thereby the properties situated on the eastern side of the north-south in Kattanachampatty Village road in S.No.67/1, an extent of 25 cents, have been enjoyed by the plaintiff's predecessors and then the plaintiff. Similarly, the lands situated on the northern side of the east-west Kattanachampatty Village road in S.F.Nos.65/4 and 64/1, an extent of 10 cents, have been enjoying by the defendants predecessors and then the defendants.

7. While so, the respondents / defendants denied that there is no north-south and east-west Kattanachampatty metal road available and they also denied the enjoyment of the petitioner's properties. But, in order to prove the existence of the pathway, the appointment of a Commissioner is very essential. Therefore, the trial Court failed to consider the above said aspects, moreover, by appointing the Commissioner to note down the physical features and measure the properties through a qualified surveyor, no prejudice would be caused to the respondents. Therefore, the order passed by the trial Court is liable to be set aside. To support of her contention, the learned counsel relied upon the judgments of this Court in



Saraswathy Vs. Viswanathan reported in **2002 (2) CTC 199** and
Annamalai Vs. Chinnasamy reported in **2019 (2) MWN (Civil) 610**.

8. The learned counsel for the respondents 1 and 2 would contend that the petitioner has filed a suit for the relief of declaration and permanent injunction and the suit is now posted for examination of the witnesses. The petitioner has not taken any steps for the appointment of a Commissioner immediately after filing the written statement and after a long gap of 5 years, the present application is filed only to delay the proceedings and to collect the evidence through the Commissioner. There is no dispute in respect of the identification of the property. There is no pathway available, as alleged by the petitioner. Therefore, only to collect the evidence, the petitioner has filed this application. Therefore, the trial Court after taking into consideration all the aspects correctly, dismissed the application. Therefore, the present Civil Revision Petition is liable to be dismissed. To support of his contention, he relied upon the judgments of this Court in ***Chandrasekaran Vs. V.Doss Naidu*** reported in **2006-2-L.W. 159** and ***Rangasamy Vs. The Superintending Engineer, TNEB, Mettur*** reported in **2006 (5) CTC 501**.



9. This Court heard both sides and perused the records in this case.

10. The petitioner herein has filed a suit for the relief of declaration and permanent injunction stating that the suit properties belong to him and he is enjoying the properties and the UDR patta was also granted in his favour. The suit properties are situated immediately on the eastern side of the north-south metal road and similarly, the defendants are enjoying the properties on the northern side of the east-west Kattanachampatty metal road. While so, the respondents / defendants filed a written statement stating that there is no pathway in existence, as alleged by the petitioner / plaintiff. Therefore, the very identification of the property itself is denied by the respondents. Therefore, the petitioner filed the application for appointment of a Commissioner to note down the physical features and measure the property through a qualified surveyor.

11. According to the respondents 1 and 2, the petitioner filed the suit for the relief of declaration and permanent injunction. While so, he has to prove his case through oral and documentary evidence and cannot collect



evidence by appointment of the Commissioner. The present application is filed only to collect the evidence by noting down the physical features and measuring the property.

12. It is an admitted fact that the suit is filed for the relief of declaration and permanent injunction. The respondents / defendants filed a written statement denying the existence of the pathway that was mentioned in the suit. The petitioner / plaintiff in the suit pleaded that there is a metal road in existence in S.Nos.67/1, 65/4 and the plaintiff's property is situated on the eastern side of the road in S.F.No.67/1. Similarly, the said metal road is also running east-west in S.F.Nos.65/4 and 64/1. The defendants' property is situated on the northern side of the east-west metal road in S.F.No.65/4.

13. In the written statement, the defendants denied that there is no metal road, as alleged by the plaintiff and there is no pathway running towards the northern side in S.F.No.65/4. Therefore, the specific contention of the plaintiff is that the land is available immediately after the eastern side of the road. The said contention is denied by the respondents / defendants. Therefore, there is a dispute with respect to the identification of the property.



Therefore, the appointment of a Commissioner is essential to decide the case.

14. Moreover, before the trial Court, the respondents herein have not filed any counter, but the trial Court, based on the written statement filed by the defendants, passed the impugned order and the trial Court failed to consider that the defendants denied the pathway, as alleged by the petitioner in the suit and thereby, there is a dispute in respect of the identification of the property. Therefore, the appointment of Commissioner is very essential and the order passed by the trial Court is liable to be set aside. By allowing this application, no prejudice would be caused to the other side. Therefore, it is appropriate to allow this application.

15. The learned counsel for the petitioner relied upon the judgments of this Court in *Saraswathy Vs. Viswanathan* reported in **2002 (2) CTC 199** and *Annamalai Vs. Chinnasamy* reported in **2019 (2) MWN (Civil) 610**. On careful perusal of the said judgments, it is clear that the object of the appointment of a Commissioner is not to collect evidence but to elucidate matters which are local in character and which can be done only by local



investigation at spot. The Commissioner cannot decide the dispute, but his report would help the Court in deciding the dispute and the existence of cart-track in the dispute land can be seen only physically. Therefore, the report of the Advocate Commissioner noting down the physical features of the property would enable the Court to arrive at a correct conclusion and to decide the *lis* between the parties.

16. In the case on hand also, according to the petitioner, the property is situated on the immediate eastern side of the metal road and the metal road is running towards the suit property. Therefore, the above said case laws are squarely applicable to the present case of the petitioner.

17. The learned counsel for the respondents relied upon the judgments of this Court in ***Chandrasekaran Vs. V.Doss Naidu*** reported in ***2006-2-L.W. 159*** and ***Rangasamy Vs. The Superintending Engineer, TNEB, Mettur*** reported in ***2006 (5) CTC 501***. On careful perusal of the said judgments, it is clear that the Commissioner cannot be appointed for the collection of evidence and local investigation is required if there is any doubt about the area of land, identification, or location of the object and it is



confirmed that the Court should appoint the Commissioner to make local inspection and not to collect evidence.

18. In the case on hand, the petitioner alleged that there is a metal road in the suit properties, but the defendants denied the existence of metal road and thereby it will not amount to the collection of evidence and the existence of metal road can be noted down by the Commissioner. Therefore, the above said case laws will not apply to the present facts of the case.

19. In view of the above said discussions, this Court is of the opinion that the trial Court miserably failed to take into consideration that there is a dispute in respect of the identification of the property and appointment of the Commissioner is only for identification of property and thereby the order of the trial Court is liable to be set aside.

20. In the result, this Civil Revision Petition is **allowed** and the order passed in I.A.No.2 of 2022 in O.S.No.39 of 2017 dated 26.09.2022 on the file of the District Munsif Court, Rasipuram, is set aside and thereby, I.A.No.2 of 2022 is allowed. The trial Court is directed to appoint the



Advocate Commissioner to note down the physical features and measure the suit properties with the help of a qualified surveyor, within a period of 15 days from the date of receipt of a copy of this order. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

26.04.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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P.DHANABAL, J.

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