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C.R.P.No.168 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.168 of 2024 and
C.M.P.No.837 of 2024

1.Thirumalai Ammal

2.Veerasley

3.Ganesan

Vs.

Petitioners

1.Rangasamy

2.Chinnasamy

3.Srinivasan

4.Andavar,

Inspector of Police.

Veeraganur Police Station,

Veeraganur Village & Post,

Gangavalli Taluk, Salem District.

5.Ramachandran,

Sub – Inspector of Police,

Thammampatti Police Station,

Thammampatti Village & Post,

Gangavalli Taluk, Salem District.

... Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 18.08.2023, in I.A.No.5 of 2023, in O.S.No.213 of 2019, on the file of the Principal District Munsif, Attur, Salem District.

For Petitioner	: Mr.K.Shakespeare
For R1 to R3	: Mr.Praveennath Selvam
For R4 & R5	: No appearance

ORDER

This civil revision petition arises against the order passed by the Principal District Munsif, Attur, Salem District, in I.A.No.5 of 2023, in O.S.No.213 of 2019, dated 18.08.2023.

2.O.S.No.213 of 2019 is a suit for declaring that the acts of the defendants are illegal and for a mandatory injunction directing the defendants to remove and clear off the dumped mud on the suit properties and to restore the suit properties to its original position within a stipulated period and failure of which, to get it done by means of the process of Court.



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3.It is the clear and categorical case of the plaintiffs that on the western side of the suit property there is a Kuttai Poramboke and adjacent to that there is a poramboke land in S.No.294/1, which is burdened with a cart track. The plaintiffs assert that the cart track is situated on the eastern side of the Kuttai Poramboke and in order to substantiate the same, they produced a rough plan. They further pleaded that on 09.10.2019, the defendants 1 to 3 along with the police force came to the suit property and created a new road on its western side. When they attempted to prevent the encroachment, the police threatened them with illegal confinement. On account of the threats and with illegal assistance of the police, a new road was formed with a width of 30ft x150 ft. Hence, the suit.

4.The defendants, on being served with the summons, filed a written statement pleading that the Kuttai Poramboke is situated in S.No.294/2 and not in S.No.294/1. They pleaded there is no cart track over S.No.294/1 and no incident as alleged had taken place on 09.10.2019. They pleaded, on that day, there were merely paring the ploughed up pathway. They also pleaded



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defendants 4 and 5 were never at the site. On these pleadings, the parties have been sent for trial.

5.Before the trial commenced, the defendants filed an application in I.A.No.5 of 2023 seeking for an appointment of Advocate Commissioner to inspect the suit property, the property of the defendants in S.No.283 as well as S.No.294/1 and existing pathway from Rasipuram to Naraikinaru road running over S.No.294/2 and S.No.283 and to file a report. This was obviously filed since they were disputing the rough plan that had presented by the plaintiffs along with the plaint.

6.The learned Judge had ordered notice in the application. The plaintiffs pleaded that the earlier suit had been presented in O.S. No.245 of 2012, which attained finality in A.S.No.07 of 2019, a Commissioner had been appointed and produced those reports. They also denied that the lands in S.No.283, which belong to the defendants can be reached only through the pathway in S.No.294/1. They pleaded that the entire idea of the defendants is to collect the evidence, which is barred by law.



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7.The learned Trial Judge after consideration of the counter and the petition, allowed the application. Hence, this revision.

8.Heard Mr.K.Shakespeare for the petitioners and Mr.Praveennath Selvam for the respondents 1 to 3.

9.Mr.K.Shakespeare invites my attention to the impugned order and points out that plaintiffs had marked Exs.R1 to R3, Advocate Commissioner's report in the previous proceedings in order to show that the claim of the respondents 1 to 3/petitioners in the I.A., does not stand scrutiny in the light of the exhibits. He further pleads that an Advocate Commissioner cannot be appointed for the purpose of gathering the evidence. Mr.Praveennath Selvam submits that the well reasoned order of the learned District Munsif does not require any interference.

10.I have carefully considered the submissions of both sides.



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11.In *Haryana Waqf Board Vs. Shanthi Sarup & Ors, (2008) 8 SCC*

671, it has been held that where there is a dispute with respect to lie or identity of a property, a civil Court should normally appoint an Advocate Commissioner to get an idea about the same.

12.It is the specific case of the plaintiffs that there is a pathway which runs over S.No.294/1. In the written statement, it is denied that there is a cart track over S.No.294/1. A perusal of the suit schedule mentioned property shows that the plaintiffs claim that the land situated in S.No.294/2 to an extent of 6.01 acres, as depicted in the rough plan, has been burdened with a new pathway created on 09.10.2019.

13.The purpose of appointment of an Advocate Commissioner is to elucidate the matter in issue which is presented to Court. When the plaintiffs assert that there is a pathway in S.No.294/1 and when the defendants denied the same, it is the duty of the Court to decide whether a pathway exist or not. The same cannot be done merely by perusal of the



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revenue records. Revenue records might help the Court, but that by itself cannot help the Court to form a conclusion.

14.This takes me to the second point of Mr.K.Shakespeare that an Advocate Commissioner's report cannot form part of evidence. This in my view is contrary to Order XXVI Rule 10(2) of C.P.C. It contemplates a situation where an Advocate Commissioner submits a report and if it complies with the requirements of Order XXVI Rule 9 and 10(1), then it can be received as evidence in the suit. As to how the report of the Advocate Commissioner becomes the evidence in the suit has been settled by this Court in *Vemba Gounder Vs. Pooncholai Gounder AIR 1996 Madras 347*. The Hon'ble Mr.Justice S.S.Subramani has held that once a report of a Commissioner is filed, if there is a doubt on the correctness of the report, any person aggrieved has to file objections to the same. After objections are received, the learned Trial Judge, if necessary, may examine the Advocate Commissioner and once he comes to a conclusion that the report deserves acceptance, it forms part of the evidence. Therefore, the plea of



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Mr.K.Shakespeare that an Advocate Commissioner's report cannot be used as evidence is not only contrary to the specific provisions of Order XXVI Rule 10(2) of C.P.C. but also to the view taken by the Court as aforestated.

15.In any event, the appointment of an Advocate Commissioner is a discretion that is exercised by the learned Trial Judge. Unless and until the discretion exercised is capricious or arbitrary, it should not be normally interfered with in exercise of the powers conferred under Article 227 of the Constitution of the India.

16.In the light of the above discussions, I find no reason to interfere with the order passed by the learned Principal District Munsif, Attur, Salem District, in I.A.No.5 of 2023, in O.S.No.213 of 2019, dated 18.08.2023. Accordingly, this civil revision petition stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs. The Trial Court is directed to follow the procedures, as directed by this Court in *Vemba Gounder Vs. Pooncholai Gounder AIR 1996 Madras 347* and pass



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appropriate orders on the Advocate Commissioner's report once it is submitted.

sli

04.11.2024

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

1.The Principal District Munsif,
Attur, Salem District.

2.Andavar,
Inspector of Police.
Veeraganur Police Station,
Veeraganur Village & Post,
Gangavalli Taluk, Salem District.

3.Ramachandran,
Sub – Inspector of Police,
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V.LAKSHMINARAYANAN,J.

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