



C.R.P. (MD) No. 166 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 166 of 2022

and

C.M.P. (MD) No.723 of 2022

Karuppaiah

... Petitioner/
Plaintiff

-VS-

1.C.Murugan
2.Velusamy
3.Sarasa
4.Sekar
5.Anusiya
6.Rathi
7.Muthammal
8.Rajeshwari

... Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.2 of 2020 in O.S.No.15 of 2020 dated 09.12.2021 on the file of the District Munsif Court, Rajapalayam.

For Petitioners : Mr.M.Thirunavukkarasu

For Respondent : Mr.M.Jothi Basu



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ORDER

The Civil Revision Petition is filed against the order dated 09.12.2021 made in I.A.No.2 of 2020 in O.S.No.15 of 2020 on the file of the learned District Munsif, Rajapalayam.

2. The suit is filed by the plaintiff claiming that the plaintiff and the defendants 2 to 8 are the exclusive owners of the pathway, which is described as Schedule II to the plaint and the first defendant has no right is the contention of the plaintiff. As per the written statement, the pathway is a common pathway. The first defendant has the easementary right to open windows, etc., on the side of the common pathway. The first defendant has also been using the common pathway. In that background, the above interlocutory application is filed for appointment of Advocate Commissioner to inspect the suit property and measure the same as per the documents of the parties and also with the help of the Town Surveyor and to file a plan and report before the Trial Court. The Trial Court found that the property itself is described as a common pathway in the plaint and therefore, held that this is not a case where the Commissioner needs to be appointed. Aggrieved by the same, the present Civil Revision Petition is filed.



3. The learned Counsel appearing on behalf of the petitioner would submit that the finding of the Trial Court is factually erroneous. A perusal of the plaint the relief prayed for and the schedule, it can be actually seen that though the schedule II property is mentioned as a pathway, it is described as the exclusive pathway belonging to the plaintiff and the defendants 2 to 8, as the pathway falls within the extent of the land owned by them.

4. Per Contra, the learned counsel appearing on behalf the respondents would submit that it is the title of the said pathway which is in question and there is no any dispute with regard to the identity. The very fact that it is used as a pathway is admitted by the plaintiff. The extent of the pathway and the description is not in dispute. Therefore, there was no necessity to appoint an Advocate Commissioner on the Trial Court as rightly rejected the application.

5. I have considered the submissions made on either side and perused the material records of the case. At the outset, the reasoning given by the Trial Court may not be correct since as per the schedule to the plaint, the property is not described as a common pathway *viz-a-viz*, the first different is concerned. Even perusal of the relief prayed for in the suit, it is described as the exclusive pathway between the plaintiff and the defendants 2 to 8 only. In that view of



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the matter, the *lis* between the parties is that whether the suit Item-2 property pathway is situated in the exclusive land belonging to the plaintiff as well as defendants 2 to 8 or it would be a common pathway where the first defendant has a right also. Apart from the same, the other right claimed by the defendant regarding easementary right will also arise as another issue. In that view of the matter, this is a fit case where the Commissioner should visit the property and make a local inquiry and also measure the property, note down its physical features as well as draw out a map on the basis of the documents of the parties as well as with the help of the Town Surveyor as per the measurement in the survey numbers and file report with appropriate maps before the Trial Court.

6. In view thereof, the Civil Revision Petition is allowed on the above terms. The order dated 09.12.2021 made in I.A.No.2 of 2020 in O.S.No.15 of 2020 is set aside and the I.A.No.2 of 2020 is allowed. The Trial Court shall appoint any Advocate as the Commissioner upon receipt of a copy of the order and shall also fix the remuneration for the Commissioner and accordingly, proceed with the matter further. Consequently, the connected Miscellaneous Petition is closed. No costs.

12.07.2024

NCC : Yes/No
PKN



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To

1. The District Munsif Court, Rajapalayam.

2. The Section Officer,

Vernacular Records,

Madurai Bench of Madras High Court,

Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

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