



C.R.P(MD)No.1672 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.03.2024

Delivered on : 30.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD)No.1672 of 2019

and

C.M.P.(MD)No.8649 of 2019

D.Devaraj : Petitioner/2nd Respondent/
2nd Defendant

Vs.

1.N.Rengaraj : 1st Respondent/Petitioner/Plaintiff

2.Suseela : 2nd Respondent/1st Respondent/
1st Defendant

3.D.Ramraj

4.D.Ravi : Respondents 3 & 4/Respondents 3 & 4/
Defendants 3 & 4

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order, dated 23.01.2019 passed in I.A.No.64 of 2018 in O.S. No.10 of 2014 on the file of the learned Additional District Munsif Court, Lalgudi and set aside the same.



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For Petitioner : Mr.V.R.Shanmuganathan

For Respondents : Mr.M.Siddharthan,
Caveator for R1.

: No Appearance, for R2 to R4.

ORDER

The Civil Revision is directed against the order passed in I.A. No.64 of 2018 in O.S.No.10 of 2014, dated 23.01.2019 on the file of the District Munsif Court, Lalgudi, allowing the petition filed under Order 26 Rule 9 of the Code of Civil Procedure

2. The revision petitioner is the second defendant. The first respondent as plaintiff has filed the suit in O.S.No.10 of 2014 against the revision petitioner and other respondents claiming permanent injunction restraining the defendants and their men from causing damages to their filed ridge from putting cartrack or any other track by removing or damaging the ridge of the plaintiff's land and the same is pending on the file of the Additional District Munsif Court, Lalgudi.



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3. The defendants have filed their written statement and are contesting the suit. Pending suit, the plaintiff has filed an application seeking appointment of commissioner in I.A.No.64 of 2018. The respondents have filed their counter statement. The learned trial Judge, after enquiry, has passed the impugned order, dated 23.01.2019 appointing an Advocate Commissioner. Aggrieved by the order of appointment, the second defendant has preferred the present revision.

4. The case of the plaintiff is that the plaintiff is owning 24.50 Ares in S.No.600/10 and 22.00 Ares in S.No.600/11 of Sanamangalam Village of Manachanallur Taluk; that the plaintiff is also having share in the Well situated in S.No.600/14; that the defendants are owning lands in S.No.600/9 and 600/11; that the defendants have to necessarily pass through the plaintiff's land to reach their lands; that though the defendants have been using the land belonging to one Venkatesan to reach their lands, the same was prevented by the said Venkatesan in the year 2008; that since the plaintiff and the defendants are belonging to same community, the defendants have been using the plaintiff's patta land to reach their land till 2012 with the permission of the plaintiff; that the defendants have offered to purchase the land which is used for reaching



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their lands for Rs.2,00,000/- and the plaintiff has also agreed for the same with a condition that the plaintiff is also to be permitted to use that pathway; that since the defendants have taken a stand that the plaintiff cannot use that pathway, the oral agreement has entered in failure; that the defendants thereafter with their henchmen have damaged the ridge and attempted to lay a pathway and that therefore, the plaintiff was forced to file the present suit for permanent injunction.

5. The defence of the defendants is that the defendants have to reach the Well portion in S.No.600/14 only through the five feet pathway available in the plaintiff's land; that the defendants have been using the said pathway for very long time; that since the plaintiff has received Rs.20,000/- as advance in pursuance of the oral agreement and the same is still in force and on that day itself, pathway was laid and the defendants have been using the said pathway to take their tractors; that though the plaintiff has agreed to execute a document, he is postponing the same on some pretext or the other; that the defendants have sent a legal notice, dated 11.12.2013 and the plaintiff having received the same, has not chosen to comply with the notice demand that therefore, the defendants were constrained to file the counter claim along with the written statement.



6. It is pertinent to note that the plaintiff has taken a specific stand that no pathway is available in his patta land and that the defendants have been using the ridge portion alone to reach their land. But according to the defendants, there existed 10 feet pathway in the plaintiff's patta land and that the defendants have been using the said pathway to reach their land for very long time and that the defendants have been using the said pathway to take their things; and that therefore, the defendants were constrained to file the counter claim along with written statement.

7. In the counter statement itself, the third respondent has specifically denied the plaintiff's affidavit averment that there was no path way as alleged by the defendants and their specific case is that there existed path way.

8. As rightly contended by the learned counsel for the first respondent/plaintiff, if that be so, there is absolutely no basis for the defendant to raise objection for appointing an Advocate Commissioner to note down the physical features and the existence of the path way.

9. As rightly contended by the learned counsel for the plaintiff, it is not the case of the first defendant that the plaintiff has obliterated or



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damaged the pathway. As rightly observed by the learned trial Judge, considering the case put forth by the respective parties, the report of the Commissioner would only help the Court in deciding the issues involved in the suit and the same cannot be considered as an attempt to collect evidence. Hence, the order of the trial Court in appointing an Advocate Commissioner cannot be found fault with. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. Since the suit is pending from 2014, the learned trial Judge is directed to give necessary instructions to the learned Advocate Commissioner to file report before the end of June 2024 and the trial Court is further directed to complete the trial and dispose of the suit within a period of two months from the date of receipt of report of the Commissioner. Consequently connected Miscellaneous Petition is closed. No costs.

30.04.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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To

The Additional District Munsif Court,
Lalgudi.



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K.MURALI SHANKAR, J

DAS

Order made in
C.R.P(MD)No.1672 of 2019
and
C.M.P.(MD)No.8649 of 2019

Dated : 30.04.2024