

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

Present : **Tmt.N.Renuga**, B.A., B.L.,

District Munsif, Sulur

Friday the 2nd day of February 2024

I.A.No.6/2023

in

O.S.No.36/2018

1. K.Subramanian
2. K.Natarajan (Died)
3. K.Karuppasamy
4. K.Kumarasamy

...Petitioners/ Plaintiffs

/ Vs /

1. R.Dandapani
2. R.Kumarasamy
3. R.Govindasamy
4. Poovathal
5. Manickam
6. Revathi

...Respondents/ Defendants

This petition is coming on 06.12.2023 for final hearing before me in the presence of Thiru.V.Sathees Kumar, Advocate for the Petitioners and Thiru.R.Prabakaran, Advocate for the 1st Respondent and Thiru.N,Siddharth, Advocate for the 4th to 6th Respondents and R2, R3 against the main suit is dismissed and upon hearing of both parties and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioner under Order 26 rule 9 of CPC to appoint an Advocate Commissioner to note down the physical features of the petitioner's property along with suit property and note down the pathway to access the petitioner's property.

1. The brief averments of the affidavit filed by the Petitioners as follows:-

1.1. The petitioners/plaintiffs have filed the main suit for declaration and permanent injunction against the respondents/defendants. The petition mentioned property is 30 feet North – South cart track which runs from 30 feet width East West public itteri and passes through the respondents land in S.F.No.52 and ends in the south on the respondents properties in S.F.No.53.

1.2. Originally the properties and other properties belonged to Periya Rayagounder and Sinna Rayagounder who were sons of Marappa gounder. Sinna Rayagounder is the father of petitioners mother Rayammal. There was a partition affected between said Periya Rayagounder and Sinn Rayagounder on 27.10.1938. In that partition 'A' schedule properties had been allotted to the Periya Rayagounder and 'B' schedule properties had been allotted to the Sinna Rayagounder.

1.3. In the above said partition Sinna Rayagounder derived the suit cart track as Easement of right by grant to access to his properties from East West Itteri. Ever since the said partition Sinna Rayagounder had used the said suit cart track to access his properties in S.F.52 and 53. It is only way to reach properties of Sinna Rayagounder in S.F.No.52 and 53 K.V.Mathapoor village. Without the suit cart track the petitioner's could not enjoy their properties.

1.4. The Sinn Rayagounder died in the year 1960, leaving 5 daughters namely Karuppammal, Thangammal, Arukkaniammal, the plaintiffs' mother Rayammal and Karunaiammal. After his demise there was partition among the daughters of the said Sinna Rayagounder on 25.12.1978. In that partition the 'B' schedule of the properties have been allotted jointly to the said Rayammal and Karunaiammal and 'A' schedule of properties have been allotted to Karuppammal, Thangammal, Arukkaniammal.

1.5. The respondents father Ramasamy gounder had purchased the two portions in S.F.No.53 and 52 from Periya Rayagounder long back. The said Sinna Rayagounder had used the said cart track to access their properties. Even before Ramasamy gounder purchased his properties. After partition the mother Rayammal and his elder sister Karunaiammal have used the said cart track to access their lands. The petitioners mother Rayammal died on 27.01.2004. After her demise the petitioners have used the suit properties to take carts, lorries van and other vehicles to their lands. The petitioners are sons of said Rayammal the suit track is for beneficial enjoyment of petitioners properties.

1.6. The petitioners have derived the Easementary right by grant for beneficial enjoyment of their properties. Without the suit cart track, the petitioners could not enjoy their properties. The respondents are obstructing petitioners to take Lorries and other vehicles through suit cart track. They have no right to do so. On 15.11.2014 the respondents and their men tried to prevent petitioners by taking van through the petition mentioned property to their lands but their attempt has been prevented by petitioner and their men. The respondents are declaring in the village that at any cost they will not allow petitioners to use the cart track. Without accessing through the suit property the petitioners have no other options to reach out their property. The only pathway which is available to reach their property. Hence, the petition.

2. The brief averments of Counter statement filed by the 1st respondent as follows:

2.1. The application is false, frivolous, vexatious and unsustainable, both in law and on facts of the case. The cart track stated by the plaintiff in the suit is an imaginary one. Further the plaintiff's claims, cart track right through easement by grant. Hence, while claiming right through the documents the plaintiff can't take Advocate Commissioner to note down the physical feature of the cart track. Further the existence of cart track is denied by the 1st defendant, the plaintiffs are alone on the burden to prove the existence of cart track as mentioned in the suit schedule. Hence, by way of appointing Advocate Commissioner the plaintiff can't collect the evidence for proving the fact of existence of cart track. Hence, the petition is to be dismissed with cost of 1st defendant.

3. Point for Consideration:-

Whether the petition under Order 26 rule 9 of CPC is to be allowed?

4. Points:-

4.1. Heard both side, records perused. The main suit is filed for declaration and permanent injunction to declared the plaintiff having right to use the suit cart track which is runs on North to South from East West Itteri through the defendant's Eastern side of property and runs till S.F.No.52 and S.F.No.53 which belongs to

plaintiffs and defendants.

4.2. The defendants denying the existence of that 30 feet with no East West Itteri and the 30 feet width North South cart track from the Itteri as mentioned in the description of property. The existence of cart track is being denied by the 1st defendant, the plaintiffs are in the initial burden to prove the facts that there is an existence of cart track as mentioned in the plaint schedule. Further the plaintiffs claiming cart track right over the suit property by way of easement by grant in their pleadings. In such circumstances, the plaintiffs ought to have proved the existence of cart track and their cart track right over the suit property by oral and documentary evidences alone. Further this court thinks the appointment of Advocate Commissioner to note down the physical features, it will definitely lead a chance of collection of evidence for the plaintiffs. Further here there is no identification dispute regarding cart track since, the existence of cart track is denied by the defendants. Hence, this court thinks if this application is to be allowed, it leads chance of collection of evidence. Hence, in the interest of justice this petition is dismissed.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 2nd day of February 2024.

District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondents side:

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.6/2023 in
O.S.No.36/2018
Dated : 02.02.2024
DMC, Sulur.

