



CRP.No.710 of 2020.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 08.03.2023

Delivered On: 24.03.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

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and
C.M.P.No.3684 of 2020

1. P.Gopalakrishnan

2. P.Muthukrishnan

3. P.Anbalagan ... Petitioners/Respondents/Plaintiffs

Vs.

S.G.Thangavel ... Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decretal Order dated 05.02.2020 passed in I.A.No.1 of 2019 in O.S.No.336 of 2019 on the file of the learned First Additional District Munsif, Salem District.

For Petitioners : Mr.C.Prakasam
For Respondent : Mr.M.Devaraj



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ORDER

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This Civil Revision Petition has been filed to set aside the fair and decretal order dated 05.02.2020 passed in I.A.No.1 of 2019 in O.S.No.336 of 2019 on the file of the learned First Additional District Munsif, Salem District.

2.The Petitioners herein are the Defendants and the Respondent herein is the Plaintiff. For the sake of convenience, the parties will be referred to as per their rank before the trial Court/learned First Additional District Munsif, Salem District.

3.The learned Counsel appearing for the Defendants, Mr.C.Prakasam submitted his arguments. As per his arguments, the Plaintiff filed the suit in O.S.No.336 of 2019 seeking right over the pathway. The Plaintiff in O.S.No.336 of 2019 on the file of the learned First Additional District Munsif, Salem, had filed a suit for injunction only. He is the tenant of the property. He is not the owner of the property. The owner of the property is the adjacent owner of the Defendants. There was a previous suit between the present Plaintiff's



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owner and the Defendants which dispute went upto the Hon'ble Supreme Court and in the Hon'ble Supreme Court, the dispute was settled in favour of the Defendants. While so, the tenant of the adjacent owner cannot file a same suit against the Defendants herein. He had filed a suit as though he has claim over the property which was already decided.

3.1.It is the further contention of the learned Counsel for the Defendants that the Plaintiff is a tenant of the neighbour of the Defendants. The tenant of the neighbour of the Defendants is using the property without entering into lease agreement with the legal heirs of the deceased Landlord, the neighbour. He had filed the suit as though he has a claim over the property, which was already decided upto the level of the Hon'ble Supreme Court in earlier proceedings between the Petitioners herein, who are the Defendants in O.S.No.336 of 2019, in an earlier suit in O.S.No.767 of 2001. The suit itself is not maintainable. While so, the Plaintiff had filed I.A.No.1 of 2019 in O.S.No.336 of 2019 for appointment of an Advocate Commissioner to note down the physical features of the property and also to measure the suit property along with Surveyor and Village Administrative Officer.



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3.2. The petition seeking appointment of Advocate Commissioner was resisted by the Defendants stating that the earlier litigations were ended upto the Hon'ble Supreme Court in favour of the Respondents in the Advocate Commissioner Petition/the Defendants in the suit. While so, ignoring the vehement objection of the learned Counsel for the Respondents/Defendants in O.S.No.336 of 2019, the learned District Munsif had allowed the petition in I.A.No.1 of 2019 in O.S.No.336 of 2019 as per order dated 05.02.2020. Aggrieved by the same, the Defendants in O.S.No.336 of 2019 and the Respondents in I.A.No.1 of 2019 had preferred this Civil Revision Petition. It is the contention of the learned Counsel for the Petitioners that the suit itself is misconceived and not maintainable.

4.The learned Counsel for the Respondent submitted that the Respondent had filed the Suit in O.S.No.336 of 2019 before the learned Additional District Munsif, Salem. The suit property is a Cart Track/Pathway for entering the premises of the Respondent herein/Plaintiff in O.S.No.336 of 2019 who had taken on lease from



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V.S.Arthanari Chettiyar. The Plaintiff in the Suit is running oil mill near the Suit property. The Suit property is a pathway for his ingress and egress from the main road. The Revision Petitioners are the Defendants before the trial Court in O.S.No.336 of 2019. The Plaintiff as well as the Defendants are in the business of oil mill. Tanker Lorry had to enter the premises of the Respondent herein/Plaintiff in the suit only through the Cart Track from the main road. Earlier, the Defendants herein filed Civil Revision Petition in C.R.P.(PD).No. 2386 of 2019 to strike of the Plaint. After hearing both the parties, this Court had dismissed the Civil Revision Petition preferred by the same Defendants. In the Civil Revision Petition, the Defendants seeking title through the judgment of the Hon'ble Supreme Court. Now, also they seek exclusive right of pathway based on compromise arrived before the Hon'ble Supreme Court. These issues are to be decided in the Suit. The Application in I.A.No.1 of 2019 is filed only for the appointment of Advocate Commissioner to note down the physical features of the disputed pathway. The Plaintiff in the Suit had filed I.A.No.1 of 2019 in O.S.No.336 of 2019 seeking appointment of Advocate Commissioner with the assistance of the Surveyor and Village Administrative Officer to



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note down the physical feature of the disputed pathway along with measurement and the Revenue records in the presence of Village Administrative Officer. The disputed pathway is clearly identifiable. Only in the trial, the documents relied by the respective parties will be considered by the Court.

4.1. The learned Counsel for the Respondent invited the attention of this Court to the type set filed by him, wherein, copy of lease agreement executed by V.S.Arthanari Chettiyar is furnished. Also, he invited the attention of this Court to the Survey sketch of Ward -V, Block No.6, Salem District wherein the disputed pathway is shown as shaded.

4.2. The learned Counsel for the Respondent invited the attention of this Court to the order made in W.P.No.29472 of 2019 and the proceedings of the Revenue Divisional Officer, Salem, dated 16.02.2021. The learned Counsel for the Respondent relied on the Will in favour of the landlord of the Respondent. The said V.S.Arthanari Chettiyar had executed Will in favour of his sons, Thiyagaraj and Sivanandan. “A” Schedule property is settled in favour of his Son, Thiyagaraj, “B”



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schedule property is settled in favour of Sivanandan. In the recitals in the Will “A” schedule property is identified as follows:

“டி.எஸ்.நெ.7/5. பொது ரோடு உள்ளது, மெயின் ரோட்டிலிருந்து ஹை டி.எஸ்.நெ.7/5 பொது ரோட்டின் வழியாக வடக்கு நோக்கி வந்தும், அதிலிருந்து “பி” ஹைடியூல் சொத்தின் வடபுறம் ஓரமாக 16 அடி அகலத்திலும், 64 அடி நீளத்திலும் சென்று பிறகு வடக்கு நோக்கி ஹை “ஏ” ஹைடியூல் நிலத்துக்கு அடிகள், வண்டி, வாகனாதிகள் போகவர பாததியமும் சேர்ந்து இந்த “ஏ” ஹைடியூலுக்கு சம்பந்தப்பட்டதாகும்.”

4.3. The learned Counsel for the Respondent also relied on the lease deed entered into with the landlord on 13.12.2002, wherein, in the schedule of property, it had been described as follows:

“சொத்தின் விவரம்

சேலம் டி, சேலம் மேற்கு ரிடி, சேலம் 3 நெ.ஜாயின்ட் சப்ரிடி, சேலம் டிவன், பள்ளப்பட்டி கிராமத்தில் “சூரமங்கலம் மெயின் ரோடு முனிசிபல் டோர் நெம்பர் 199-க்கு சம்பந்தப்பட்ட சுமார் 30 அடிக்கு சுமார் 30 அடி அளவில் உள்ள நிலமும் இதில் உள்ள ஆஃபெஸ்டாஃ அட்டை போட்ட குடோன் கட்டிடமும், இதைச் சேர்ந்த சகல உரிமைகளும், ஹை சொத்திற்கு சூரமங்கலம் மெயின் ரோட்டுக்கு வடபுறம் உள்ள சுமார் 25 அடி அகல தென்வடல் ரோட்டில் இந்த வாடகை ஒப்பந்த சொத்தில் இருந்து சூரமங்கலம் மெயின் ரோடு வரையில் அடிகள், வண்டி வாகனாதிகள் லாரிகள் வகையறா போகவர சகல தடபாத்தியங்களும் சகல சுதந்திரங்களும் ஈஸ்மெண்ட் ரைட்டுகளுக்கும் சேர்ந்து பூராவும்தான் இந்த வாடகை ஒப்பந்தத்திற்கு சம்பந்தப்பட்டது. ஹை குடோன் கட்டிடம் சூரமங்கலம் மெயின் ரோடு, டோர் நெம்பர்.199-க்கு சம்பந்தப்பட்டது.”

4.4. He had also filed extract of the Town Survey Land Register regarding the property in Survey field No.39/0. Also, he had filed copy of the sketch showing the pathway for entrance for ingress and egress



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from the main road.

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5. By way of rejoinder, the learned Counsel for the Defendants submitted that the subject matter of the dispute is till 19.02.2019. No document is filed by the Respondent/Plaintiff in O.S.No.336 of 2019 to prove his contention. The tenancy agreement is dated 13.12.2002. Subsequent to the death of V.S.Arthanari Chettiyar, the Respondent herein as Plaintiff in O.S.No.336 of 2019, had not renewed the lease with the legal heirs of V.S.Arthanari Chettiyar. The Will relied by the learned Counsel for the Respondent herein does not mention about S.No.7/4. It only mentioned about T.S. Survey No.7/3 whereas the subject matter of the property is Survey No.7/4 which is in exclusive use of the Defendants in the Suit/Petitioners herein. Therefore, the order passed by the learned Additional District Munsif, Salem, in allowing the I.A.No.1 of 2019 is to be set aside.

6. On consideration of the rival submissions, since the subject matter of the dispute was settled in a previous case before the Hon'ble Supreme Court, the contention of the learned Counsel for the Defendants



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is found acceptable. The documents placed before this Court by the Respondent are prior to 2019. Therefore, the contention of the learned Counsel for the Respondent is not found acceptable in the light of the submissions made by the learned Counsel for the Defendants in the Suit who had placed the documents in support of his contention, particularly, the compromise decree of the Hon'ble Supreme Court. If the Respondent is aggrieved, he shall agitate the Order of the Writ Court in W.P.No.23268/2021. It is the contention of the learned Counsel for the Defendants that in the RDO enquiry, they had not included S.No.7/3 which is the subject matter of the dispute. Further, it is found that the Plaintiff in O.S.No.336 of 2019 had not impleaded the landlord in the Suit seeking relief against the Defendants. Therefore, the Respondent/Plaintiff as tenant and neighbour of the Defendants cannot seek the relief as claimed in I.A.No.1 of 2019 in O.S.No.336 of 2019. Therefore, the Order passed by the learned First Additional District Munsif, Salem in I.A.No.1 of 2019 in O.S.No.336 of 2019 is liable to be set aside.

In the result, this ***Civil Revision Petition is allowed.*** The order



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dated 05.02.2020 passed by the learned First Additional District Munsif,

Salem in I.A.No.1 of 2019 in O.S.No.336 of 2019 is set aside.

Consequently, connected Miscellaneous Petition is closed. No costs.

24.03.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

1. The First Additional District Munsif,
Salem District.
2. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
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