

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.1498 of 2012
and M.P.No.1 of 2012

1.P.Pattilingam (died)
2.P.Dhandapani .. Petitioners/Defendants
3.Dhanalakshmi, w/o.P.Pattilingam
4.P.Manibharathi, s/o.P.Pattilingam

(petitioners 3 and 4 brought on record as legal heirs of the deceased 1st petitioner vide order of this Court dated 08.09.2016 by RMJ, made in M.P.No.1 of 2015 in CRP(PD)No.1498 of 2012)

Vs.

T.Dhali Gowder .. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 23.08.2011 made in C.M.A.No.31 of 2010 on the file of II Additional Subordinate Court, Coimbatore, confirming the order dated 07.09.2010 made in I.A.No.2976 of 2008 in O.S.No.2691 of 2008 on the file of the Principal District Munsif Court, Coimbatore.

For Petitioner : Mr.S.Mukunth
for M/S.Sarvabhauman Associates
For Respondent : No appearance

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 23.08.2011 made in C.M.A.No.31 of 2010 on the file of II Additional Subordinate Court, Coimbatore, confirming the order dated

07.09.2010 made in I.A.No.2976 of 2008 in O.S.No.2691 of 2008 on the file of the Principal District Munsif Court, Coimbatore.

2.The respondent as a plaintiff filed a suit in O.S.No.2691 of 2008 for bare injunction, restraining the revision petitioners/defendants not to make any construction in the suit pathway situated in S.No.318/7 and 12. Along with the suit, the respondent/plaintiff has also filed an application in I.A.No.2976 of 2008 under Section 39 Rule 1 and 2 of C.P.C. The trial Court, after hearing both sides, allowed the application. Against the said order, the petitioners/defendants have preferred C.M.A.No.31 of 2010, in which, the impugned order passed in I.A.No.2976 of 2008, dated 07.09.2010, has been confirmed. Against the said order, the present revision is preferred by the petitioners/defendants.

3.Heard the learned counsel for the petitioners and perused the typed set of papers.

4.Learned counsel for the petitioners/defendants has drawn my attention through the revenue record and submits that S.No.318/7 alone is a pathway and S.No.318/12 is not a pathway. But he fairly conceded that the said document was marked as Ex.R3.

5.It is an admitted fact that pathway is situated in between S.No.318/7 and 9 to 11. In my view, whether the pathway situated in S.No.318/12 has to be decided only after letting oral and documentary evidence. In such circumstances, once both the Courts below have come to the conclusion that no construction to be made till the disposal of the suit, this Court need not interfere with the said findings.

6.At this juncture, learned counsel for the petitioners seeks early disposal of the suit, since he wants to make a construction in the property situated in S.No.318/12.

7.Considering the aforestated facts and circumstances of the case, I am of the view, it is a fit case for confirming the order passed by both the Courts below. Accordingly, the Civil Revision Petition is dismissed with a direction to the trial Court to dispose the suit within a period of three months from the date of receipt of a copy of this order, after giving fair opportunity to both sides. No costs. Consequently, connected Miscellaneous Petition is closed.

29.07.2016

kj

R.MALA,J.

kj

To

The Principal District Munsif Court, Coimbatore.

C.R.P(PD).No.1498 of 2012
and M.P.No.1 of 2012 and 1 of 2015

29.07.2016