

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 1441 of 2011
and
M.P. No. 1 of 2011

1. Kannupaiyan
2. Rajammal
3. Raghupathy
4. Ravichandran

.. Petitioners

Vs

1. Packiam
2. Rajendiran
3. Pachiannan
4. Mallika

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the judgment and decree dated 23.12.2010 passed in C.M.A No.5 of 2009 on the file of the Sub Court, Mettur confirming the fair and decretal order passed in I.A. No. 22 of 2009 in O.S. No.9 of 2009 dated 01.06.2009 by the District Munsif cum Judicial Magistrate Court, Omalur.

For Petitioners : Mr. T. Sezhian

For Respondents : Mr. P. Jagadeesan for R1 to R6

ORDER

This Civil Revision Petition arises against the judgment and decree dated 23.12.2010 passed in C.M.A No.5 of 2009 on the file of

the Sub Court, Mettur confirming the fair and decreetal order passed in I.A. No. 22 of 2009 in O.S. No.9 of 2009 dated 01.06.2009 by the District Munsif cum Judicial Magistrate Court, Omalur.

2. Learned counsel for the Revision petitioner submitted that the respondents filed a suit in O.S. No.9 of 2009 before the District Munsif cum Judicial Magistrate Court, Omalur, seeking for a declaration of right of the respondents/ plaintiffs to the cart track by virtue of easement by prescription and for permanent injunction restraining the revision petitioners/ defendants, from in any way interfering with the peaceful use and enjoyment of the cart track. According to the learned counsel for the revision petitioner there was no evidence to show that the respondents/ plaintiffs was in long usage of the cart track. The respondents/ plaintiffs has not proved that they were using the 12 ft to 15 ft cart track, running from main tar road through various lands and the lands of the revision petitioners/ defendants, for their access to the main road. Learned counsel further submitted that in the aforesaid suit, I.A. No. 22 of 2009 was filed before the District Munsif cum Judicial Magistrate Court, Omalur, seeking for an interim injunction, pending disposal of the suit. By an order dated 01.06.2009, an order of interim injunction was granted, against the

revision petitioners/ defendants. Aggrieved by the said order, the revision petitioners/ defendants preferred an appeal in C.M.A. No. 5 of 2009 before the Sub Court, Mettur, challenging the interim order passed by the trial court in I.A. No. 22 of 2009 dated 01.06.2009. The Appellate Court dismissed the C.M.A. No.5 of 2009, holding that the suit property can be used as a pathway by the respondents/ plaintiffs. Challenging the said decree and judgment, the revision petitioners/ defendants have preferred the present revision before this Court.

3. Learned counsel for the respondents/ plaintiffs contended that documentary evidences were adduced before the Courts below and only on the basis of such documentary evidences and based on the Advocate Commissioner's report, an interim order was granted by the trial court and the Appeal was also dismissed by the Appellate Court. The revision petitioners/ defendants have not obtained the benefit of interim orders before this Court, pending Civil Revision Petition. Therefore, by taking into consideration of the facts and circumstances of the case, reversing the order of the courts below would cause great prejudice to the respondents/ plaintiffs, no interference is warranted by this Court with the detailed order passed by the Court below. However, the learned counsel requested this

Court to direct the trial court to dispose of the suit itself.

4. Heard Mr. T. Sezhian, learned counsel for the petitioners and Mr. P. Jagadeesan, learned counsel for the respondents.

5. It is found that on perusal of the records and based on the Advocate Commissioner's report, the Trial Court and the Appellate Court have granted interim orders in favour of the respondents/ plaintiffs. The revision petitioners/ defendants have not obtained any interim order, pending the Civil Revision Petition. Therefore, at this stage, this Court feels that no interference is necessary, with the interim orders passed by the Trial Court and confirmed by the Appellate Court, in the Civil Miscellaneous Appeal.

8. Considering the above facts and circumstances of the case and to meet the ends of justice, I am inclined to pass the following orders:

- a) The order dated 23.12.2010 passed in C.M.A No.5 of 2009 on the file of the Sub Court, Mettur by confirming the fair and decreetal order passed in I.A. No. 22 of 2009 in O.S. No.9 of 2009 dated 01.06.2009 by the District Munsif cum Judicial

Magistrate Court, Omalur, is hereby confirmed.

b) The learned District Munsif cum Judicial Magistrate Court, Omalur, is directed to dispose of the suit in O.S. No.9 of 2009, on merits, uninfluenced by the observations made by the Courts below, within a period of six months from the date of receipt of a copy of this order.

c) The Civil Revision Petition is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

20.04.2016

Index: Yes/No
avr

To

- 1.The Sub Court
Mettur.
2. The District Munsif cum
Judicial Magistrate Court,
Omalur.

D.KRISHNAKUMAR,J.

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