



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRP (MD) No.2360 of 2015 (PD)

and

M.P. (MD) .No.1 of 2015

1.A.Janaki
2.R.Babu
3.R.Jawahar
4.R.Dinesh Kumar

.. Petitioners

Vs.

1.Y.Gopi
2.S.Rani

.. Respondents

Prayer: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the fair and decretal order dated 22.09.2015 and made in I.A.No.749 of 2015 in O.S.No.35 of 2014 on the file of the learned Principal District Munsif, Nagercoil.

For Petitioners : Mr.K.N.Thambi

For Respondents : Mr.A.Arumugam
for Mr.C.Christopher

O R D E R

This memorandum of Civil Revision Petition has been directed against the fair and decretal order dated 22.09.2015 and made in the interlocutory application in I.A.No.749 of 2015 in O.S.No.35 of 2014 on the file of the learned Principal District Munsif, Nagercoil.

2. The revision petitioners herein are the plaintiffs in the suit in O.S.No.35 of 2014, whereas the respondents 1 and 2 are the defendants.

3. It is manifested from the records that the suit in O.S.No.35 of 2014 has been filed by the revision petitioners/plaintiffs as against the respondents herein seeking;



"a) a decree directing the respondents/defendants to pay a compensation of Rs.25,000/- as damages due to their act of waste caused by them;

b) a decree of permanent injunction for the first and third plaintiffs, restraining the respondent/defendants from causing any nuisance from allowing the waste water to ooze into the A-Schedule property;

c) a decree for declaration that the plaintiff C-Schedule property is a common passage and plaintiffs are entitled to use the same containing their land and to get free light and air to their building;

d) a decree for permanent injunction for the fourth plaintiff restraining the respondents / defendants, their men and servants, from causing any obstruction in any way enjoying the C-Schedule property by the fourth plaintiff;

e) a decree for mandatory injunction directing the fourth defendant to remove the unauthorised obstruction caused in GF line within the time limit fixed by the Court."

4. When the suit was pending, the revision petitioners/plaintiffs had taken out an application in I.A.No.749 of 2015 under Order 12 Rule 8 and Section 151 of the Code of Civil Procedure to direct the respondents/defendants 1 and 2 to produce the following documents;

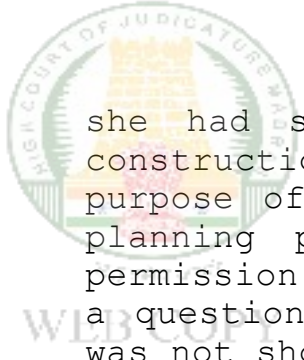
"1. Original approved plan by municipality to put up construction by defendants.
2. Original approval order by Nagercoil municipality by put up construction by defendants."

5. After hearing both sides the learned trial Judge viz., Principal District Munsif, Nagercoil had closed the petition on 22.09.2015.

6. Challenging the correctness of the above order, the present revision is filed by the revision petitioners/plaintiffs.

7. Heard Mr.K.N.Thambi, learned counsel appearing for the revision petitioners and Mr.A.Arumugam, learned counsel appearing for Mr.C.Christopher, learned counsel, who is on record for the respondents.

8. As it is revealed from the averments of the affidavit filed in support of the petition, the trial was commenced in the presence of the respondents and the plaintiffs side witnesses were examined after marking necessary documents. The second respondent/defendant was examined as DW1. During the course of her cross-examination,



she had stated that they were making arrangements to put up construction in the place, which was purchased by them for the purpose of putting up the house and that they had also obtained planning permission. She had also admitted that the planning permission was not produced before the court. At the same time, to a question, she had answered that the passage shown in the plan was not shown as common passage.

9. In this connection Mr.K.N.Thambi has argued that the production of the original approved plan given by the municipality for put up construction by the defendants as well as the original approved order given by Nagercoil Municipality to put up construction for the defendants were absolutely necessary, and only for the purpose of issuing a direction to the respondents/defendants 1 and 2 to produce those documents, the revision petitioners/plaintiffs had filed the above said petition in I.A.No.749 of 2015 under Order 12 Rule 8 and Section 151 of the Code of Civil Procedure. The respondents/defendants had also filed their objection and in para 3 of their counter statement, they have stated as follows;

"3.The second defendant is an uneducated lady. The defendants did not receive any plan of approval or connected approval orders from the Municipality. The defendants are not having any document connected with plan approval. The second defendant has mistakenly stated during the time of cross examination due to tongue slip and without having enough of knowledge to understand. The plaintiffs have been harassing the defendants through the exparte injunction order."

10. It is also to be noted that the learned counsel appearing for the respondents/defendants, on 15.09.2015, had also made an endorsement which is extracted as under;

"Submitted.

Received copy. The defendants did not receive any plan and approval and connected documents from Municipality. DW1 has wrongly stated during the time of Cross examination due to tongue slip. The petition is filed in the belated stage with an intention to delay the court procedure and harass the defendants. Hence the petition may be dismissed in the preliminary stage itself in the interest of justice."

11. In this connection Mr.K.N.Thambi, while advancing his arguments has invited the attention of the Court to the cross examination of DW1(D2).

The relevant portion is extracted as under;



“நாங்கள் விலை வாங்கியுள்ள இடத்தில் வீடுகட்ட முயற்சி செய்கிறோம். வரைபட அனுமதி பெற்றுள்ளோம். அந்த வரைபட அனுமதியை நீதிமன்றத்தில் தாக்கல் செய்யவில்லை. இந்த வரைபடத்தில் மேற்படி பாதையை பொதுப் பாதையாக காட்டியுள்ளோம் என்றால் சரியல்ல.”

12. Though she had admitted in her cross examination that they had obtained plan approval from the Nagercoil Municipality, in the counter statement, the second defendant/DW1 has conveniently stated that she had mistakenly stated during the time of cross examination due to tongue slip without having enough knowledge to understand.

13. It is also pertinent to note here that the learned counsel appearing for the revision petitioners herein had made an endorsement saying that the DW1 had wrongly stated during the time of cross examination due to tongue slip, which is inadmissible as it appears self-contradictory and destructive in nature as against her own admission in her cross examination. But without understanding this fact, the learned trial Judge has simply proceeded to close the petition, which is absolutely against the settled principles of law and it is liable to be set aside. Therefore, this Court finds that the impugned order dated 22.09.2015 and made in I.A.No.749 of 2015 itself is liable to be set aside.

14. In the result, the Civil Revision Petition is allowed by setting aside the impugned order dated 22.09.2015 and made in I.A.No.749 of 2015. The interlocutory application in I.A.No.749 of 2015 is allowed. No Costs. Subsequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

PJL

To

The Principal District Munsif, Nagercoil.

+1CC to Mr.K.N.Thampi Advocate Sr.No.2259

+1CC to Mr.C.Christopher Advocate Sr.No.2526

GJM/JGB/DP/1.3.16-2p-4c

CRP (MD) No.2360 of 2015 (PD)

and

M.P. (MD) .No.1 of 2015

12.01.2016