

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2535 of 2009
& M.P.No.1 of 2009

1.Amutha

2.Muthu

3.Raja

4.Kanniammal

.. Petitioners

Vs.

1.Radhakrishnan

2.Arputham

3.Velu

4.Ettiyappan

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the C.P.C., against the fair and decretal order dated 06.08.2008 passed by the Subordinate Court, Madurantakam, Kancheepuram District, in C.M.A.No.8 of 2005 reversing the fair and decretal order dated 13.04.2005 made in I.A.No.390 of 2002 in O.S.No.278 of 2001 on the file of the District Munsif Court, Madurantakam, Kanchipuram District.

For Petitioners : Mr. N.Nagusah
For Respondents : Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 06.08.2008 passed by the Subordinate Court, Madurantakam, Kancheepuram District, in C.M.A.No.8 of 2005 reversing the fair and decretal order dated 13.04.2005 made in I.A.No.390 of 2002 in O.S.No.278 of 2001 on the file of the District Munsif Court, Madurantakam, Kanchipuram District.

2. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.278 of 2001 on the file of the District Munsif Court, Madurantakam, Kanchipuram District. The petitioners filed suit for permanent injunction restraining the respondents from interfering with the petitioners' possession and enjoyment of the suit property. The petitioners filed I.A.No.1202 of 2001 for temporary injunction and the same was granted. The respondents filed I.A.No.390 of 2002 for temporary mandatory injunction directing the petitioners to remove the construction put up by them on the southern side of the suit pathway and in default to remove

the same by the respondents through Court.

3. The petitioners filed counter affidavit and opposed the said application.

4. The learned Judge dismissed the application on the ground that the suit pathway is petitioners' private pathway.

5. Challenging the order of dismissal dated 13.04.2005 made in I.A.No.390 of 2002, the respondents filed C.M.A.No.8 of 2005. On appeal, the said judgment was set aside. The Appellate Court considering the materials on record and fact that the judgment of the trial Court granting permanent injunction in favour of the petitioner was set aside by the appellate Court, allowed the C.M.A. directing the petitioners to remove the construction put up by the petitioners within three months.

6. Against the order dated 06.08.2008 made in C.M.A.No.8 of 2005, the present civil revision petition is filed by the petitioners.

7. The contention of the learned counsel for the petitioners is that in the suit filed by the petitioners for permanent injunction,

the respondents are not entitled for an order of mandatory injunction and they have to initiate separate proceedings for eviction, has no merits. In the present case, the petitioners filed suit for permanent injunction restraining the respondents and pending suit, obtained ex parte interim injunction. According to the respondents, the petitioners taking advantage of the interim injunction, put up construction pending suit. The respondents have not denied this averment. Further the Advocate Commissioner appointed and filed a report stating that the construction put up by the petitioners is after filing of the suit.

8. In view of the above facts, the relief of permanent injunction sought for by the petitioners was rejected and the construction put up by the petitioners pending suit after obtaining ex parte temporary injunction has to be removed.

9. The learned appellate Judge considered all the above facts in proper perspective and rightly allowed the application. There is no irregularity or illegality in the order of the learned appellate Judge dated 06.08.2008 warranting interference by this Court.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

11.07.2017

Index : Yes/No

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To

1.The Subordinate Court
Madurantakam, Kancheepuram District.

2.The District Munsif Court
Madurantakam, Kanchipuram District.

V.M.VELUMANI, J.

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