

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CIVIL REVISION PETITION(PD) No.1025 of 2018
and C.M.P.No.5429 of 2018

1.Palanisamy

2.Velusamy

.. Petitioners

vs

Rangasamy

.. Respondent

The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 08.12.2017 passed in I.A.No.561 of 2017 in O.S.No.19 of 2017 pending on the file of the learned District Munsif, Paramathi.

For Petitioners

... Mr.L.Parvin Banu

ORDER

The Civil Revision Petition has been filed to set aside the order and decree dated 08.12.2017 passed in I.A.No.561 of 2017 in O.S.No.19 of 2017 passed by the learned District Munsif, Paramathi.

2.According to the petitioners/defendants 1 and 2, the respondent/plaintiff filed a suit in O.S.No.19 of 2017 against the petitioners/defendants 1 and 2 and defendants 3 to 6 seeking

declaration and permanent injunction. In the said suit, the petitioners have filed an application in I.A.No.561 of 2017 under Order 7 Rule 11 of CPC seeking to reject the plaint as no cause of action has arisen on the date of filing of the suit and also denied the allegation that on 10.02.2017, the petitioners and other four defendants were trying to destroy the common pathway. The Court below dismissed the said application by order dated 08.12.2017. As against the said order, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioners submitted that the Court below erroneously dismissed the said application, without considering the averments made in the affidavit filed in support of the application. The learned counsel for the petitioners further submitted that there was no police complaint with regard to the destruction of common pathway. Hence, the impugned order passed by the Court below is liable to be set aside.

4.Heard the submission made by the learned counsel for the petitioners and perused the materials available on record.

5.It is the specific case of the petitioner that there is no

such destruction of pathway as mentioned in the plaint and there is no evidence to show the destruction of common pathway in the suit property.

6.The Court below has considered the above said application in detail and rightly passed the order stating that the dispute with regard to the destruction of common pathway and the payment of deficit Court fee have to be decided only at the time trial in the suit by adducing necessary oral and documentary evidence.

7.Considering the facts and circumstances of the case and submission made by the learned counsel for the petitioner and on perusal of records, the impugned order passed by the Court below is sustainable and does not warrant interference of this Court.

8.In the result, the Civil Revision Petition fails and the same is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Speaking/Non Speaking order
Index: Yes/No
cla

20.03.2018

D.KRISHNAKUMAR,J.

cla

To

The District Munsif,
Paramathi.



**C.R.P.(PD)No.1025 of 2018
and C.M.P.No.5429 of 2018**

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Date: 21.02.2018