IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.04.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(NPD)No.79 of 2018 and
C.M.P.No.335 of 2018

Sathyabama ... Petitioner

Vs.

Vanjiappan ... Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India against judgment and decree dated 30.10.2017 in C.M.A.No.2 of 2017 on the file of the Subordinate Judge, Dharapuram confirming the judgment and decree dated 05.06.2017 in I.A.No.623 of 2017 in O.S.No.213 of 2017 on the file of the District Munsif Court, Dharapuram, Tiruppur District.

For Petitioner : Mr.N.Karthikeyan
For Respondent : Mr.P.Navaneethakrishnan

O R D E R

This civil revision petition has been filed against judgment and decree dated 30.10.2017 in C.M.A.No.2 of 2017 on the file of the Subordinate Judge, Dharapuram confirming the judgment and decree dated 05.06.2017 in I.A.No.623 of 2017 in O.S.No.213 of 2017 on the file of the District Munsif Court, Dharapuram, Tiruppur District.

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2 The respondent filed a suit in O.S.No.623 of 2017 on the file of the learned District Munsif, Dharapuram, seeking bare injunction and mandatory injunction against the petitioner herein. He also filed an interlocutory application in I.A.No.623 of 2017 under Order 39 Rule 1 of CPC seeking an order of interim injunction restraining the respondent from interfering with the enjoyment of the petitioner in using the pathway by constructing a permanent wall.

3 The learned trial Court after considering the arguments advanced on either side allowed the application by an order dated 05.06.2017.

4 Aggrieved against the above said order dated 05.06.2017, the petitioner who is the defendant in the suit filed Civil Miscellaneous Appeal in C.M.A.No.2 of 2017 before the learned Subordinate Judge, Dharapuram.

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5 The lower appellate court considered all the averments put forth by either parties and dismissed the appeal preferred by the petitioner herein by an order dated 30.10.2017, by confirming the order of the Trial Court dated 05.06.2017 made in I.A.No.623 of 2017

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in O.S.No.213 of 2017. Assailing the same, the present civil revision petition has been preferred by the petitioner.

6 The learned counsel for the petitioner would submit that the respondent filed a suit for bare injunction and for mandatory injunction in respect of the suit property stated to have been used by the respondent/plaintiff as path way to reach Pollachi main road. The said pathway is situated in the property belongs to the petitioner/defendant and that the respondent/plaintiff has no right to seek the relief of bare injunction and mandatory injunction over the same. The learned counsel further stated that the respondent/plaintiff never used the path way to reach Pollachi main road and he had alternative way to reach the same. The learned counsel further stated that even in the sale deed dated 18.03.1987, there is no mentioning about the suit path way and the respondent/plaintiff falsely mentioned the description of property in the plaint. Hence the revision petitioner prays to allow the civil revision petition by setting aside the order dated 30.10.2017.

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7 The learned counsel appearing for the respondent/plaintiff submitted that the respondent/plaintiff purchased the property under

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the sale deed dated 18.03.1987 and from that day onwards he is using the suit property as a path way to reach Pollachi main road and it was also mentioned in the said sale deed. The learned counsel further stated that if the petitioner/defendant have any grievance in respect of the plaintiff's usage of path way, he has to establish his right over the same by producing valid documents and it is also a matter to be decided after conducting elaborate trial. In support of his contentions, he has placed his reliance on the decisions reported in ***2017 (3) TNLJ 234 (Civil) (Rasaiyan vs. Arulramalingam).***

8 Heard the learned counsel appearing on either side and perused the material available on record.

9 According to the learned counsel for the petitioner the path way stated to be used by the respondent/plaintiff is situated within the boundaries of the property belongs to the petitioner/defendant and the plaintiff has no right over the same.

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10 Per contra, the learned counsel appearing for the respondent/plaintiff contends that the respondent/plaintiff is using the said pathway from the date of purchase of his land vide sale dated

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18.03.1987 and the respondent now creating hindrance on the same by putting up constructions. It is well settled proposition that granting temporary injunction is discretionary power of the Court. If such discretionary power is exercised judicially without any arbitrariness by the trial Court then the appellate Court need not interfere with the order passed by the trial Court. In this case the trial Court and the appellate Court have exercised their discretionary powers judicially and this Court does not find any arbitrariness in the orders passed by the Courts below.

11 In view of above, this Court is of the view that it is a matter for full fledged trial and rights of parties cannot be decided in civil revision petition. This Court does not find any illegality or infirmity in the order dated 30.10.2017 in C.M.A.No.2 of 2017 passed by the learned Subordinate Judge, Dharapuram.

12 In the result, this civil revision petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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P.VELMURUGAN, J.,

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To

1. The Subordinate Judge, Dharapuram
2. The District Munsif Court, Dharapuram, Tiruppur District.

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