



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.10.2018
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
CRP (PD) (MD) Nos.963 & 964 of 2018

1.M/s.Iswarya Healthcare Partnership
Firm

Through its partner Dr.Velusamy
D.No.12, Kasthuriba Nagar, 2nd Main Road,
Adayar, Chennai.

2.M/s.Iswarya Healthcare Partnership Firm
Through its partner Dr.Chandralekha,
D.No.12, Kasthuriba Nagar, 2nd Main Road,
Adayar, Chennai.

...Petitioners
in both cases

Vs.

T.M.Nagar Residents Welfare Association,
Through its Secretary(Registration No.130/2011),
No.5 R, 5th Cross Road, T.M.Nagar,
Uthangudi, Madurai.

...Respondent
in both cases

Common Prayer : These Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order passed in CMA Nos.14 & 15 of 2017 on the file of the learned II Additional Subordinate Judge, Madurai dated 16.12.2017 confirming the order passed by the learned District Munsif, Madurai Taluk in I.A Nos.133 & 134 of 2013 in O.S No.63 of 2013 dated 08.02.2017 and dismiss I.A Nos.133 & 14 of 2013 in O.S No.63 of 2013.

For Petitioners
in both cases: Mr.K.K.Kannan

For Respondent
in both cases: Mr.G.Prabhu Rajadurai
for Mr.Arjunvarman

COMMON ORDER

O.S No.63 of 2013 on the file of the District Munsif Court, Madurai Taluk was instituted by T.M.Nagar Residents' Welfare Association through its Secretary against the revision petitioners herein and certain official defendants. The case set out in the ~~plaint~~ is that the revision petitioners herein have purchased the suit property which was originally owned by one Nachiyappa



Chettiar. He wanted to promote the suit property and had obtained approval from the local authority, namely, Uthangudi Panchayat. He had also handed over the road portion. TNEB had erected electric polls on the suit property. The road laid by the said Nachiyappa Chettiar is required for accessing T.M.Nagar which is adjacent to it. While so, after purchase from the said Nachiyappa Chettiar, the revision petitioners attempted to block the access. Hence, the suit in question was instituted seeking the reliefs of declaration and permanent injunction.

2. In the said suit, the plaintiffs filed I.A No.133 of 2013 seeking grant of temporary injunction restraining the revision petitioners herein from interfering with the use of the suit property as a common pathway by the general public. They also took out I.A No.134 of 2013 for appointing an Advocate Commissioner to inspect the petition mentioned property and note down the physical features of the property and also to measure the property with the help of the Government town surveyor along with the revenue records and sketch and field map and for filing a detailed report.

3. The learned Trial Munsif by orders dated 08.02.2017 allowed both the I.As. Aggrieved by the same, the revision petitioners filed CMA Nos.14 and 15 of 2017 before the II Additional Sub Judge, Madurai. The first appellate court by orders dated 16.12.2017 dismissed both the CMAs. Questioning the same, these two civil revision petitions have been filed.

4. Heard the learned counsel on either side.

5. The learned counsel appearing for the revision petitioners reiterated the contentions set out in the memorandum of grounds. At the outset, it must be observed that the order allowing I.A No.134 of 2013 is not an appealable order. But then, the revision petitioners chose to file an appeal before the first appellate court and thereafter come to this Court by way of revision. Be that as it may, this Court will have to now decide whether the Trial Munsif was justified in appointing an Advocate Commissioner to inspect the petition mentioned property for the purpose of noting down its physical features and for measuring the same with the help of the revenue records.

6. In this case, there are rival versions. The case of the plaintiff is that the members of the plaintiff association are using a portion of the suit property as a pathway. In order to establish this contention, they have pointed out that the erstwhile owner had given a consent letter to the E.B authorities and that pursuant thereto electric polls have been laid. <https://hccourtscourts.gov.in/resources/> have been drawn across the suit property. But, this assertion is denied by the revision petitioners herein. In order to elucidate the matter in issue, the trial court chose



to appoint an Advocate Commissioner. Only the report of the Advocate Commissioner based on a spot inspection would help to elucidate the matter in issue. In fact, the very purpose and object of Order 26 of CPC is this. I am now exercising jurisdiction under Article 227 of the Constitution of India. Only if the order passed by the court below is shown to be perverse or in excess of authority, I would be justified in interfering. No such case has been made out. Hence, I have no hesitation to sustain the order appointing the Advocate Commissioner.

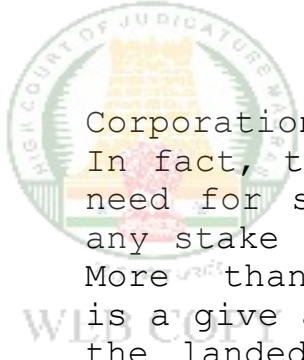
7.The case of the plaintiff is that the suit property was intended to be promoted as a lay out by the erstwhile owner Nachiyappa Chettiyar. It is specifically averred in the plaint that approval was given by Uthangudi Panchayat and that a portion of the suit property was earmarked for road purposes. It is also seen from the pleadings that Uthangudi Panchayat had expended government funds for laying the road.

8.The learned counsel appearing for the plaintiff/contesting respondent drew my attention to the relevant portion of the written statement filed by the local authority. However, the learned counsel appearing for the revision petitioners would claim that the local authority intended to deny the stand of the plaintiff in toto and that due to faulty English and improper preparation, an impression has been given as if the local authority has conceded to a limited extent.

9.I am however of the view that a plain reading of the written statement does lead one to the conclusion that the stand of the local authority (Uthangudi Panchayat) is that the government funds were utilized for laying road on the suit property. In any event, this aspect of the matter can be clarified only in a regular trial and a final conclusion cannot be arrived at in an enquiry in the I.A.

10.The learned counsel appearing for the revision petitioners placed considerable emphasis on the order dated 15.04.2013 in WP (MD)No.5870 of 2013. It is true that the Madurai Corporation with which Uthangudi Panchayat has since merged made it clear before the High Court that they have no intention to lay a road in RS.No.27/2A and 27/2B of Uthangudi Panchayat. The writ petition filed by the revision petitioners herein was closed by recording the aforesaid submission of the Standing Counsel for Madurai Corporation.

11.I am of the view that the writ proceedings referred to by the learned counsel for the revision petitioners will not advance these civil revision petitions. This is for more than one reason. The writ petition was disposed of by merely recording the submission of the standing counsel for Madurai



Corporation and there was no factual adjudication of the issue. In fact, the learned Judge observed in his order that there is no need for such an exercise. Secondly, the present plaintiff or any stake holder was not made as a party to the writ proceedings. More than anything else, the prayer in the writ petition itself is a give away. The revision petitioners wanted restoration of the landed property belonging to them to its original shape by removing the gravel laid in the suit property. This itself shows that the Madurai Corporation had taken steps to lay a road on the suit property. The corporation would not lay a road on what is purely a private property. The fact remains that even according to the revision petitioners, the corporation made an attempt to lay a road on the suit property. In fact, the corporation had even laid the gravel. That is why, the revision petitioners wanted restoration of the property to its original shape by removal of the gravel laid by the corporation.

12. This single circumstance is sufficient to sustain the order of injunction granted by the court below. In any event, the suit is of the year 2013. Substantial justice can be rendered by directing the trial Court to dispose of the suit within a period of six months from the date of receipt of a copy of this order. The orders passed by the courts below are affirmed. Both these civil revision petitions are dismissed. It is needless to mention that the disposal of the suit will depend on the evidence adduced before the court below and the outcome of these civil revision petitions will not have any bearing on the final determination of the suit. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The II Additional Subordinate Judge, Madurai.

2. The District Munsif, Madurai Taluk.

3. The Record Keeper, V.R. Section,

Madurai Bench of the Madras High Court, Madurai. (2 Copies)

+ 2 CC TO MR. K. K. KANNAN, ADVOCATE IN SR NO. 89294, 89295

+ 2 CC TO MR. M. ARJUN VARMA, ADVOCATE IN SR NO. 89797

skm

BU/RP/SAR-1 : 01.11.2018 : 4P/9C