

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP No.323 of 2008 and

M.P.No.1 of 2008

1. Patte Gounder
2. Samy Gounder
3. Natarajan
4. Palanisamy
5. Muthusamy
6. Veerappa Gounder ... Petitioners

Vs.

1. C.Palanisamy Gounder
2. R.Palanisamy
3. V.Varadappa Gounder ... Respondents

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 13.12.2007 passed in E.P.No.211 of 1994 in O.S.No.175 of 1993 by the District Munsif, Sathyamangalam.

For Revision Petitioners : Mr.R.T.doraisamy
For 2nd respondent : Mr.N.Manokaran
Respondents 1 and 3 : Died

O R D E R

Aggrieved over the order of the execution court, directing the advocate commissioner to remove the pipelines fixed underneath the cart track, this revision petition has been filed.

2. The revision petitioners are the defendants in the original suit. Originally the suit has been filed by the respondents/plaintiffs for permanent injunction restraining the defendants from digging any pit in the cart track and from

interfering with the possession and enjoyment of the plaintiffs. Thereafter, it appears that through the execution proceedings, an amendment was sought by the plaintiff for removing the pipelines. That petition was also challenged by way of revision petition in CRP NPD No.2171 of 2007 before this court and the same was also dismissed on 01.08.2007. Thereafter, a Commissioner was appointed and the Commissioner has found that the pipelines have laid three feet underneath the cart track to carry water from the river to agricultural land situated on the other side of the cart track. The learned execution court has ordered to remove the pipelines crossing in the suit cart tract between X2, X3, X4, X5, X6 and X7. As against which, the present revision petition has been filed.

3. The learned counsel appearing for the revision petitioner would submit that the suit has been originally laid not to dig any pit on the cart track and also not to cause any hindrance to the usage of cart track. According to the revision petitioners, the cart track was in existence and the pipes were laid underneath the cart track long ago, much prior to the suit and only through such pipes, the water is distributed to the agricultural land situated on the other side of the cart track. Therefore, removal of the pipes will cause undue hardship to the revision petitioners.

4. The learned counsel appearing for the respondents would submit that the matter has already been reached finality and hence, the revision petitioners cannot seek any equity in this matter.

5. It is to be noted that the suit has been originally filed restraining the revision petitioners from forming the cart track and also causing any hindrance to the usage of the pathway. Admittedly, the said suit has been decreed. Only during execution proceedings, amendment was sought for removal of the pipelines, which were laid underneath. A Commissioner was appointed and he had inspected the property and filed his report and then, the execution court ordered for removal of the pipelines, fixed three feet below in the cart track.

6. It is necessary to mention that the main suit itself was filed only not to lay any pipes on the middle of the cart track, which would cause damage to the usage of the cart track. The cart track is passing through the agricultural lands. No doubt, there is a decree and judgment restraining the revision petitioner. The purpose of filing the suit itself is for free access of the cart track, without any hindrance. When the agricultural fields situated in and around the cart track, it is a normal practice in

the villages that they draw water from one side to other side and for the same, they underlaid the pipelines, without causing any disturbance to the lands of the pathway. Hence, without identifying and establishing the facts that when such pipelines were laid down, the court cannot order to remove such pipe lines. When the pipe lines were already been laid underneath, which did not cause any hindrance to the free access over the pathway, this court is of the view that the order for removing the pipelines, crossing in the suit cart track between X2, X3 and X4, X5 and X6, X7, as mentioned in the commissioner's plan, is not correct.

7, Accordingly, this court directed the revision petitioner to put a concrete over the pathway i.e. over the area, under which the pipes were laid, as shown in the commissioner's report, to avoid any damage to the cart track, within a period of one month from the date of receipt of a copy of this order and report the same to the trial court within such time. Till then, the order of the execution court dated 13.12.2007 shall not be implemented. On failure of carrying out such work, within the stipulated period, the execution court shall proceed further, as per its order dated 13.12.2007. The trial court shall also depute the same commissioner to carry out and complete the concrete work over the area, shown as X2, X3 and X4, X5 and X6, X7, in the commissioner's plan. The commissioner's fee shall be paid by the revision petitioner.

8. With the above observations, this revision petition is disposed of. No costs. The connected civil miscellaneous petition is closed.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

mst
To

1. The District Munsif, Sathyamangalam.

+1 cc to MR.R.T.DORAISAMY Advocate SR.NO. 34286

+1 cc to MR.N.MANOKARAN Advocate SR.NO. 34376

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spp(co)
RD 08/06/2019