

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

C.R.P.No.3823 of 2013

K.Arumugam

...Petitioner/Defendant

Vs

1.K.Ramasamy

2.K.R.Kannan

3.K.R.Mathan

...Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 22.02.2013 made in C.M.A.No.25 of 2011 on the file of the Principal Sub Court, Erode confirming the order dated 29.04.2011 made in I.A.No.399 of 2010 in O.S.No.113 of 2008 on the file of the District Munsif cum Judicial Munsif Court, Kodumudi.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr.V.S.Kesavan

O R D E R

This Civil Revision Petition has been filed against the concurrent finding of the trial Court and first appellate Court in granting mandatory injunction in the application in I.A.No.399 of 2010 pending disposal of the suit in O.S.No.113 of 2008.

2.The plaintiffs have taken up the said application on the ground that despite the order of injunction granted by the Court below, the defendant has obliterated a portion of the channel. Hence, he sought for mandatory injunction directing the defendant to restore the channel and the trial Court has granted the said injunction. The first appellate Court has also confirmed the same against which the present revision has been filed.

3.The learned Counsel for the revision petitioner contended that the trial Court ought not to have granted injunction particularly with the dispute in regard to the channel whereas the learned Counsel for the respondents has submitted that the trial Court and the first appellate Court has considered the entire aspects and passed orders.

4.I have perused the materials on record and the orders of the trial Court and first appellate Court. It is seen that the suit has been originally filed by the respondents/plaintiffs for declaration declaring the they are entitled to drain the surplus water peculates in their land, rain water etc., into the suit channel as a natural right and for permanent injunction and other reliefs. In the said suit, an application for interim injunction was filed in I.A.No.473 of 2008 and the same has been ordered. The said order has also been confirmed in the appellate Court.

5.Subsequently, this application in I.A.No.399 of 2010 has been filed on the ground that despite the said injunction, the channel was obliterated. Hence, a direction has been sought to restore the channel. The trial Court has considered the reports of the commissioner and has found that the channel has been obliterated by the revision petitioner/defendant during the pendency of the injunction and has allowed the application by granting mandatory injunction. Accordingly, the Courts below has factually found that the channel has been obliterated violating the interim injunction and has granted mandatory injunction to restore the channel. The Commissioner's report has also been relied by the trial Court and hence, the Courts below have rightly arrived in such conclusions.

6.In view of the above, I do not find any illegality or error in the orders passed by the Courts below and in the result, this Civil Revision Petition is dismissed. No costs. The trial Court is directed to dispose of the suit within three months from the date of receipt of the copy of this order.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sub Court,
Erode.

2.The District Munsif cum Judicial Munsif,
Kodumudi.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.N.Guruprasad, Advocate, SR.No.27063

+1cc to Mr.V.S.Kesavam, Advocate, SR.No.27362

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Kak (08/05/2019)



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