



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

**C.R.P. (PD) (MD) No.1056 of 2012
and M.P.No.2 of 2012**

WEB COPY

1.Sam
2.Robin Joseph ... Petitioners/Respondents/Defendants

-vs-

Thomas ... Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.03.2012 passed in I.A.No.267/2012 in O.S.No.88/2012 on the file of the District Munsif Court, Padmanabhapuram.

For Petitioners : Ms.J.Anandavalli
For Respondent : Mr.K.P.Narayanakumar

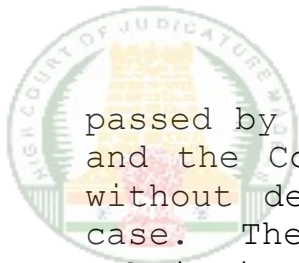
O R D E R

This Civil Revision Petition has been filed against the order passed by the Court below in I.A.No.267/2012 dated 15.03.2012, granting an order of interim injunction in favour of the respondent.

2.The petitioners are the defendants in the suit. The respondent has filed a suit seeking for a declaration for a right of pathway and for a consequential permanent injunction restraining the defendants from committing any acts of waste over the plaint 'C' schedule property.

3. The respondent/plaintiff filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure seeking for an order of interim injunction pending disposal of the suit. The Court below had granted an order of interim injunction in favour of the respondent and had subsequently extended the said order. This order has now been put to challenge before this Court.

4. The learned counsel for the petitioners submitted that admittedly, 'C' schedule property goes through the property belonging to the petitioners. Therefore, the learned counsel submitted that the Court below even without properly identifying the property has virtually prevented the petitioners from using the said property. The learned counsel submitted that the order



passed by the Court below does not reflect any application of mind and the Court below has merely repeated the statutory provisions without dealing with the petitions on the peculiar facts of the case. The learned counsel for the petitioners, in support of her submissions, relied upon a judgment of this Court in **Indiabulls Finance Services Limited v. Jubilee Plots and Housing Private Limited and others** reported in **2009 (4) CTC 64**.

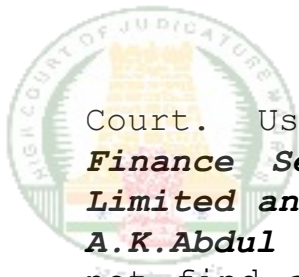
5. Per contra, the learned counsel appearing on behalf of the respondent submitted that the present petition filed under Article 227 of the Constitution of India is not maintainable, since there is an effective alternative remedy available to the petitioners to file an application under Order 39 Rule 4 of the Code of Civil Procedure to vacate the order of interim injunction.

6. Without resorting to the said remedy, the petitioners have straight away approached this Court and therefore, the present petition must be dismissed as not maintainable. The learned counsel further submitted that even factually, the respondent has been using the pathway for nearly 50 years and the petitioners are attempting to put up a construction in the said pathway and thereby preventing the respondents from using the pathway. Therefore, the Court below has rightly passed an order of interim injunction and there are no grounds to interfere with the same.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The bone of contention on the side of the petitioners is that the Court below, even without properly identifying the property, through which, the right of pathway is claimed by the respondent, has passed an order of interim injunction and thereby has completely prevented the petitioners from using their own property. The learned counsel submitted that admittedly the 'C' schedule property runs through the property belonging to the petitioners. Therefore, the Court below ought to have properly identified the topography of the property and thereafter considered the application on merits.

9. It is true that an order of *exparte* interim injunction cannot directly be challenged before this Court under Article 227 of the Constitution of India. However, where an *exparte* injunction has been granted without examining or considering the *prima facie* case and merely the ingredients of Order 39 of the Code of Civil Procedure has been reproduced in the order, this Court has the jurisdiction to entertain a Civil Revision Petition against such an order. The position of law is no longer res integra and is well settled by a catena of decisions of this



Court. Useful reference can be made to the judgment in ***Indiabulls Finance Services Limited v. Jubilee Plots and Housing Private Limited and others*** reported in (2009) 4 CTC 64 and in ***A.S.Ansar v. A.K.Abdul Kareem*** reported in (2018) 6 CTC 407. This Court does not find any reasons that have been assigned by the Court below, while granting an order of interim injunction in favour of the respondent.

10. This Court, while entertaining this Civil Revision, Petition had passed an order directing the parties to maintain status quo. This order is continuing right from the year 2012. Therefore, this Court does not want to dislodge this position and in the considered view of this Court, the status quo can be maintained till the disposal of the suit.

11. In the result, the order passed by the Court below in I.A.No.267/2012 in O.S.No.88/2012, is hereby set aside and the parties are directed to maintain the status quo till the disposal of the suit.

12. The Civil Revision Petition is accordingly allowed and the Court below is directed to complete the proceedings in O.S.No.88/2012, within a period of five months from the date of receipt of copy of this order. No costs. Consequently connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif,
Padmanabhapuram.

+1 CC to M/s.J.ANANDDHAVALLI, Advocate (SR-90138[F] dated 27/09/2019)

+1 CC to M/s.K.P. NARAYANA KUMAR, Advocate (SR-90271[F] dated 30/09/2019)

C.R.P. (PD) (MD)No.1056 of 2012
and M.P.No.2 of 2012
27.09.2019

RR

AE/ (16.10.2019) 3P 4C

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