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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2019

CORAM

THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

C.R.P. [MD] No. 258 of 2019 (PD)

and C.M.P. [MD] No. 1262 of 2019

1. J. John Rose
2. Stansilus
3. Savariour Pitchai : Petitioners/Petitioners/
1 to 3 Defendants

Vs.

1. P. Mary Nimilda : 1st Respondent/ 1st Respondent/
Plaintiff

2. The Executive Director,
Kottar Social Service,
Kottar, Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District. : 2nd Respondent/2nd Respondent/
4th Defendant

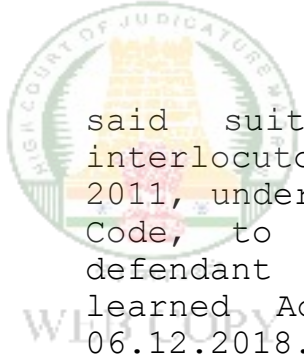
PRAYER: Petition filed under Article 227 Constitution of India, by setting aside the Fair and Decreeal Order passed in I.A.No. 141 of 2017 in O.S.No.77 of 2011 dated 06.12.2018, on the file of the Additional District Munsif Court, Eraniel.

For Petitioner : Mr. N. GA. Natraj

ORDER

This Civil Revision Petition has been filed to set aside the Fair and Decreeal Order passed in I.A.No. 141 of 2017 in O.S.No.77 of 2011 dated 06.12.2018, on the file of the Additional District Munsif Court, Eraniel.

2. The first respondent/plaintiff herein has filed a suit in O.S. No.77 of 2011, before the learned Additional District Munsif, Eraniel, for mandatory injunction directing the defendants to remove the unlawful compound wall construction made on the western portion of newly formed south to north direction concrete road, by blocking the gate fixed on the south eastern corner of the said western portion and if they fail to obey the Court order it may be removed through Court by the cost of the defendant, in favour of the plaintiff and for permanent injunction, restraining the defendants, and their men or agents not to construct any compound wall on the eastern side of the newly formed concrete road through the plaint schedule property towards south to north direction be granted infavour of the plaintiff. During the pendency of the above



said suit, the petitioners herein/defendants had filed an interlocutory application in I.A. No.141 of 2017 in O.S. No.77 of 2011, under Order 26, Rule 14 and Section 151 of the Civil Procedure Code, to appoint an Advocate Commissioner to examine the 1st defendant for defendant side evidence which was dismissed by the learned Additional District Munsif, Eraniel, by Order dated, 06.12.2018. Aggrieved over the same, the petitioners/defendants-1 to 3 had filed the present Civil Revision Petition.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. When the matter is taken up for admission, the learned counsel for the petitioners pointed out that the 1st petitioner/1st defendant was Parish Priest and he is affected by Verighose and he is not able to move from his place and also produced disability certificate which is showing the illness Verighose Spine of the first defendant and his disability is 80%. He further pointed out that the first defendant is the only competent person to lead evidence and contest the case and he is moving with the help of vehicle only, hence, it is necessary to appoint an Advocate Commissioner to examine the 1st petitioner/1st defendant for defendant side evidence.

5. The Trial Court observed that it is not the case that the 1st petitioner/1st defendant is bed ridden and he is moving with the help of vehicle and that the 1st petitioner/1st defendant cannot be conveniently cross examined in his place and hence the 1st petitioner/1st defendant can be produced before the Court for evidence.

6. Considering the facts and circumstances of the case, the 1st petitioner/1st defendant is moving with the help of vehicle and the other petitioners-2 & 3/defendants-2 & 3 also worked with him, so, they can also very well deposed on his behalf. Hence, there is no necessity for the petitioners in filing such a petition for examining witness at his place. Hence, there is no merit in the Civil Revision Petition and is liable to be dismissed.

7. In the light of the above observations, the Civil Revision Petition is dismissed and confirmed the Fair and Decreetal Order, dated 06.12.2018, passed by the Additional District Munsif Court, Eraniel in I.A.No. 141 of 2017 in O.S.No.77 of 2011. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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To
The Additional District Munsif,
Eraniel.

1 CC to M/s.N.GA.NATRAJ, Advocate (SR-45926[F] dated 11/02/2019)

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08.02.2019

DS/ /SAR- (09.04.2019) 3P 3C