

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.223 of 2018

and

C.M.P.No.1272 of 2018

1.P.Subbanna Gounder

2.S.Velusamy

3.K.Subbaiyan

4.S.Ragupathi

5.A.Shanmugam

.. Petitioners

Vs.

1.S.Krishnamoorthy

2.M.Kolanthavel

3.P.Subbaiyan

4.V.Nallusamy

5.V.Sivakumar

6.Ramasamy

7.A.Magudapathi

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, against the fair and final orders dated 03.01.2018 in IA.No.538 of 2017 in OS.No.129 of 2011 on the file of the learned District-cum-Judicial Magistrate, Kodumudi, Erode.

For Petitioners : Mr.Kannan Kumar

ORDER

The plaintiffs in O.S.No.129 of 2011 have come up with this Revision challenging the dismissal of their application under Order 14 Rule 5 of the Code of Civil Procedure requesting the court to frame an additional issue as to the entitlement of the defendants over the suit cart track. The suit in O.S.No.129 of 2011 has been filed by the plaintiffs seeking a permanent injunction restraining the defendants from interfering with their right to use the suit cart track. It is stated that the defendants have also filed another suit in O.S.No.146 of 2011, seeking a similar relief of injunction against the plaintiffs and both the suits were posted for trial jointly.

2. In these circumstances, the plaintiffs have come up with the instant application in I.A.No.538 of 2017 requesting the court to frame the following issue in the suit '*Whether the defendants are entitled to right in the suit cart track described in schedule B of the plaint by easement by prescription and grant as stated in the written statement.*' The trial court rightly dismissed the application concluding that in a suit for injunction by the plaintiffs, it is for the plaintiffs to establish their right. The entitlement

of the defendants need not be gone into and therefore, the suggested issue need not be framed. Hence, this Revision.

3. Heard Mr.Kannan Kumar, learned counsel appearing for the petitioner.

4. The learned counsel appearing for the petitioner would vehemently contend that because of the suit that has been filed in O.S.No.146 of 2011, the court must have framed the issue suggested in the suit filed by the plaintiffs in O.S.No.129 of 2011.

5. I am unable to agree with the contention of the learned counsel. The suit in O.S.No.129 of 2011 is only a suit for bare injunction, restraining the defendants from interfering with the plaintiffs right to use the cart track. In defence, the defendants are projecting various rights. Since the suit is only for injunction it is for the plaintiffs to establish the right claimed by them in the suit. It is settled law that the plaintiffs have to succeed on their own case and they cannot fall back on the defects in the defence. The issue

suggested is wholly unnecessary considering the scope of the suit. Hence, I do not see any reason to interfere with the order of the trial court dismissing the application. The Revision therefore fails and it is accordingly dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.09.2020

kmm

Internet: Yes/No

Index: Yes/No

To

The District-cum-Judicial Magistrate,
Kodumudi, Erode.



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R.SUBRAMANIAN, J.

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