

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD). No. 902 of 2017
and C.M.P. No. 4427 of 2017

1.Rangasamy Gounder
2.Nataraj
3.Gurusamy Gounder
4.Balasubramaniam
Sellappa Gounder (died)
5.Sreeranganathan
6.Goundayammal
7.Kannammal

... Petitioners

Vs

Tirumoorthy

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 14.12.2016 made in I.A. No. 20 of 2015 in O.S. No. 112 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai.

For Petitioners : Mr. A. Sundaravadhanan

For Respondent : Mr. C. Munusamy

ORDER

The matter is heard through "Video Conferencing".

The present Civil Revision Petition is filed to set aside the fair and decretal order dated 14.12.2016 made in I.A. No. 20 of 2015 in O.S. No. 112 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai.

2. The petitioners are defendants 1 to 6, 8 and 9 in O.S. No.112 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Perundurai. The respondent filed the said suit for injunction restraining the petitioners from his peaceful possession and enjoyment of the suit cart track or obliterating the same by the petitioners. The petitioners filed written statement on 03.01.2010. Trial commenced. When the suit was posted for cross-examination of P.W.1, the petitioners filed I.A. No.20 of 2015 to file additional written statement. According to the petitioners, at the time of written statement, certain vital facts were omitted to be mentioned and unless

the petitioners are permitted to file additional written statement, they will be put to irreparable loss and hardship. The respondent filed counter affidavit and contended that the petitioners have filed said I.A. after taking number of adjournments for cross-examination and after six years of filing written statement, only with a view to prolong the suit and prayed for dismissal of the petition. The learned Judge considering the averments in the affidavit, counter affidavit and arguments of counsel for parties, dismissed the I.A.

3. Against the said order of dismissal dated 14.12.2016 made in I.A. No. 20 of 2015 in O.S. No.112 of 2009, the petitioners have come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioners contended that the learned Judge has dismissed the said I.A., without considering the averments in the additional written statement. As per the partition deed dated 07.09.1982 mentioned in the additional written statement, the respondent is entitled only to use cart track of 12 feet. The petitioners came to know about the partition deed dated 07.09.1982 only at the time of cross examination of P.W.1. The

learned counsel appearing for the petitioners further submitted that the respondent failed to implead the necessary parties who are the adjacent owners and prayed for allowing the Civil Revision Petition.

5. The learned counsel appearing for the respondent submitted that the respondent is using cart track measuring 22 x 2000 feet and the petitioners are preventing the respondent from use of the said cart track. The reason given by the petitioners for not including the averments in the written statement filed earlier are not valid. The petitioners filed the present I.A. only to drag on the proceedings at the belated stage and prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioners as well as the respondent and perused the materials available on record.

7. From the materials on record, it is seen that the respondent is seeking permanent injunction restraining the petitioners from preventing the respondent's peaceful possession and enjoyment of the cart track or

obliterating the same by the petitioners. The petitioners filed written statement and at the time of cross examination, they sought to file additional written statement. According to the petitioners, the respondent is entitled to use of cart track only to an extent of 12 feet and not 22 feet as claimed by the respondent in the plaint. They also further stated that the respondent has not impleaded adjacent owners who are necessary parties. The contention of the learned counsel appearing for the petitioners is without merits. The respondent has not filed suit for declaration of title. In a suit for injunction, it is for the party who is seeking injunction to prove that he is in possession and enjoyment of the suit property and other party is interfering with his possession. In the present case, the respondent is seeking injunction in respect of the cart track measuring 22 x 2000 feet. It is the case of the petitioners that the respondent is entitled to only 12 feet. It is for the parties to prove by acceptable evidence, their respective contentions. It is open to the petitioners to prove that the respondent is enjoying the cart track only by 12 feet and not by 22 feet. In view of the above, there is no reason to interfere with the order of the learned Judge warranting interference by this Court.

8. In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

17.09.2020

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Index: Yes/No

To

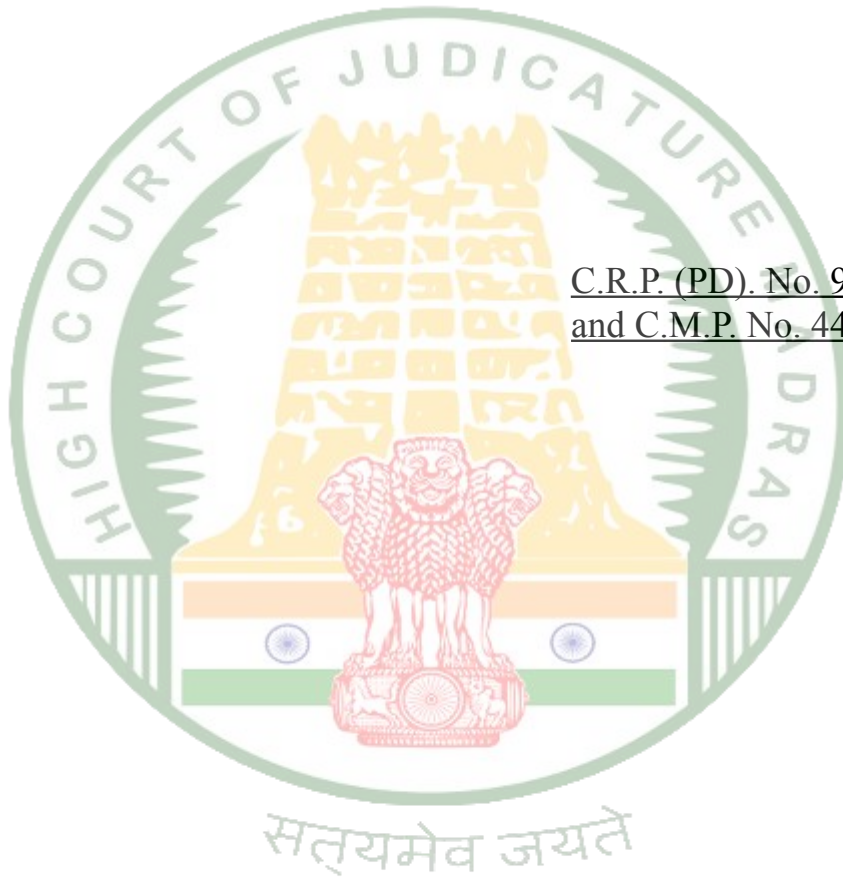
The District Munsif cum Judicial Magistrate,
Perundurai.



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V.M.VELUMANI,J.

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