



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P(MD)No.512 of 2020

and

C.M.P. (MD) .No.3326 of 2020

WEB COPY

T.Murugan

... Petitioner/Plaintiff

vs.

P.Natarajan

... Respondent/defendant

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 13.03.2020 in C.M.A.No.1 of 2018 on the file of the Subordinate Judge, Uthamapalayam and allow I.A.No.1678 of 2017 and dismissed the I.A.No.6 of 2018 in O.S.No.211 of 2017 on the file of the District Munsif, Uthamapalayam.

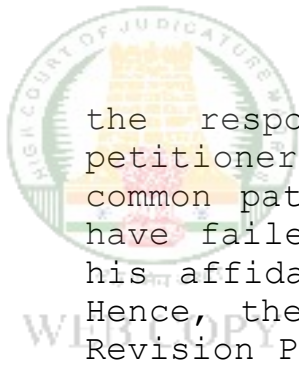
For Petitioner : Mr.C.Jawahar Ravindran

ORDER

This civil revision petition is filed to set aside the order dated 13.03.2020 in C.M.A.No.1 of 2018 on the file of the Subordinate Judge, Uthamapalayam and allow I.A.No.1678 of 2017 and dismissed the I.A.No.6 of 2018 in O.S.No.211 of 2017 on the file of the District Munsif, Uthamapalayam.

2.The petitioner as the plaintiff, has filed a suit in O.S.No.211 of 2017 before the District Munsif, Uthamapalayam, for permanent injunction by restraining the respondent from erecting pipe line in the common pathway. The revision petitioner has also filed a petition in I.A.No.1678 of 2017 for temporary injunction not to erect the pipe line in the common pathway. In the said suit, the respondent/defendant has filed a petition in I.A.No.6 of 2018 for temporary injunction. Both the applications were heard by the trial Court and dismissed the application filed by the petitioner and allowed the application filed by the respondent. Against the said order, the petitioner has filed an appeal in C.M.A.No.01 of 2018 before the Sub-ordinate Court, Uthamapalayam. The appellate Court has dismissed the said appeal. Challenging the order passed in C.M.A.No.01 of 2018 by the Sub-ordinate Court, Uthamapalayam, the petitioner has filed the present Civil Revision Petition.

3.The learned counsel appearing for the petitioner submitted that the common pathway is a common pathway to both the petitioner and



the respondent, in which, even without permission of the petitioner, the respondent has no right to lay pipe line in the common pathway. He further submitted that both the Courts below have failed to consider the grounds raised by the petitioner in his affidavit and grounds of appeal and dismissed the petition. Hence, the petitioner prays before this Court to allow the Civil Revision Petition.

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

5. Admittedly, the petitioner and the respondent are the joint owners in the same pathway. Since the suit property is a common pathway, no injunction cannot be granted against the co-owner. However, injunction can be granted against the co-owner restraining from alienation or any construction in the common pathway. Therefore, the Courts below have found that the petitioner has no prima facie case and no prejudice would be caused to the petitioner, if the respondent lay the pipeline in the common pathway.

6. Under these circumstances, this Civil Revision Petition is liable to be dismissed. Accordingly, the same stands dismissed. If granting an order of injunction, it amounts to give relief sought in the suit. Therefore, the trial Court is directed to decide the case, after recording the evidence. Since the suit is of the year 2017, this Court directs the trial Court to dispose the suit in O.S.No.211 of 2017 on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order, without influencing any of the observations made in this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

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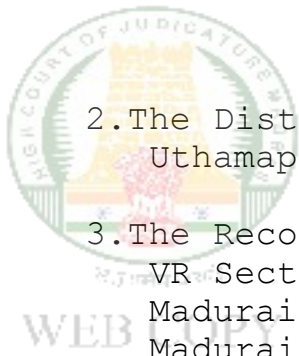
Sub Assistant Registrar (CS)

Ns

To

1. The Subordinate Judge,
Uthamapalayam.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The District Munsif,
Uthamapalayam.

3.The Record Keeper,-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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KM (24.06.2020) 3P 5C