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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.M.A. (MD)Nos.529 and 581 of 2020

and

C.M.P. (MD)Nos.5927 and 6041 of 2020

Minor P.Yogesh
son of Parthiban
Through his father and Guardian
Parthiban Son of Sankaran Chettiar
Door No.8/365, Vaithiya Nagaiah Street,
Perumal Koil Backside,
Paramakudi Town and Taluk,
Ramanathapuram District.

..Appellant/Respondent/Plaintiff
in C.M.A. (MD)No.529 of 2020

T.Ramu

...Appellant/Appellant/defendant
in C.M.A. (MD)No.581 of 2020

vs.

T.Ramu

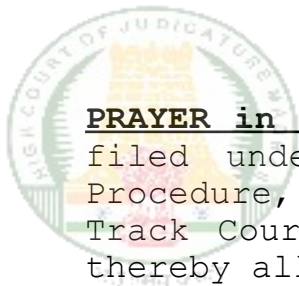
...Respondent/Appellant/Defendant
in C.M.A. (MD)No.529 of 2020

Minor P.Yogesh
son of Parthiban
Through his father and Guardian
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Door No.8/365, Vaithiya Nagaiah Street,
Perumal Koil Backside,
Paramakudi Town and Taluk,
Ramanathapuram District.

...Respondent/Respondent/Plaintiff
in C.M.A. (MD)No.581 of 2020

PRAYER in C.M.A. (MD)No.529 of 2020: This Civil Miscellaneous Appeal filed under Order 43 Rule 1 Clause (u) of the Code of Civil Procedure, 1908, to set aside the order of remand dated 05.03.2020 passed in A.S.No.46 of 2018 on the file of the learned Additional District Fast Track Court, Paramakudi setting aside the judgment and decree in O.S.No.89 of 2017 dated 27.06.2018 on the file of the Sub Court, Paramakudi by allowing this Civil Miscellaneous Appeal with costs throughout.

For Appellant	: Mr.R.Sundar Srinivasan
For Respondent	: Mr.V.Ragavachari for Mr.S.Ramesh



PRAYER in C.M.A. (MD)No.581 of 2020: This Civil Miscellaneous Appeal filed under Order 43 Rule 1 Clause (u) of the Code of Civil Procedure, 1908, to set aside the order of Additional District Fast Track Court, Paramakudi in A.S.No.46 of 2018 dated 05.03.2020 and thereby allow the appeal.

WEB COPY

For Appellant : Mr.V.Ragavachari
for Mr.S.Ramesh
For Respondent : Mr.R.Sundar Srinivasan

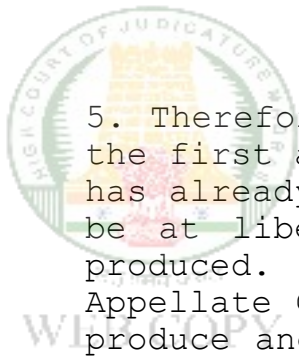
COMMON JUDGMENT

This Civil Miscellaneous Appeal arises out of an order of remand in A.S.No.46 of 2018. The said appeal is filed for bare injunction that the defendant shall not obstruct the plaintiff to use the property as a common pathway and also for decree of mandatory injunction.

2. The appellate Court in Paragraph 21 of its judgment has entered a finding that there is a common pathway, but has proceeded to find the same in the report of the Commissioner filed before the trial Court. It is not made certain as to where exactly this pathway runs. Indeed, the first appellate Court also indicated that even the Commissioner has expressed the same in his report, and wondered why the Commissioner did not give further notices to both the parties for completing his job. Ultimately, the learned First Appellate Judge remanded the matter back to the trial Court for appointing a commission for determining the measurement of the pathway and also allow the parties to adduce such necessary evidence for arriving on *denovo* conclusion on the aspect.

3. The learned counsel appearing for the defendant submitted that the nature of the order of remand is partially inconsistent with the finding of the learned First Appellate Judge in paragraph 21 of his judgment. Inasmuch as the First Appellate Judge has entered categorical finding that the pathway is a common pathway what remains to be done is only to ascertain its dimension. However in a portion the appellate court actually passed an order of remand expanding the scope of the enquiry by the trial Court.

4. It is apparent that both sides do not want remand of the matter to the trial Court, which is a rarity these days. In the meantime, this Court was informed that the trial Court has already appointed a Commissioner for the purpose indicated in the judgment of the first appellate Court. This Court also examined the entire papers and is satisfied that it is the matter, which even the First Appellate Court can conclusively decide and hear. This Court shares the anxiety of the parties to the dispute. The Commissioner appointed by the trial Court will now file his report before the First Appellate Court, which shall decide the issue on the basis of its finding in the context on what it has already decided.



5. Therefore, this Court sets aside the order of remand and directs the first appellate Court to decide the issue along the lines, which has already outlined in its judgment dated 05.03.2020. Parties would be at liberty to produce any additional evidence required to be produced. However, the parties are required to inform the First Appellate Court the exact nature of evidence that they are going to produce and it must be done in a time bound manner in terms of the directions given by the First Appellate Court.

6. These Civil Miscellaneous appeals are accordingly disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Additional District Fast Track Court, Paramakudi.
- 2.The Sub Court, paramakudi.
- 3.The Section Officer, (2Copies)
V.R.Section, Madurai Bench of Madras High Court,
Madurai

+1CC to Mr.R.Sundar Srinivasan,Advocate, SR.No.25924 datd 17/12/2020

+1CC to Mr.V.Raghavachari,Advocate,SR.No.25945 dated 17/12/2020

C.M.A. (MD)Nos.529 and 581 of 2020

and

C.M.P. (MD)Nos.5927 and 6041 of 2020

17.12.2020

PM(CO)

KB(27.01.2021) 3P 7C