

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(P.D) No.1880 of 2021
and
C.M.P.No.14657 of 2021**

Madhanlal D Chawla

...Petitioner

Vs.

G.Kalavathi

...Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 28.10.2020 in I.A.No.4 of 2019 in O.S.No.403 of 2019, passed by the learned Principal District Munsif, Salem.

For Petitioner : Mr.R.Nalliyappan

ORDER

This Civil Revision Petition is filed, to set aside the order dated 28.10.2020 in I.A.No.4 of 2019 in O.S.No.403 of 2019, passed by the learned Principal District Munsif, Salem.

2. It is submitted by the learned counsel for the petitioner that the I.A.No.4 of 2019 in O.S.No.403 of 2019 was filed by the petitioner under

Order 7, Rule 11 (a) and read with Section 151 of C.P.C., for rejection of the plaint. The case of the petitioner is that the suit in O.S.No.403 of 2019 was filed, claiming respondent's right of way through the suit road running in Survey Nos.64/1 and 65/1 and other Survey numbers as per the registered road right agreement dated 15.12.2008. The respondent purchased the suit property from the vendor-R.Padmavathi on 24.08.2017. The vendor-Padmavathi had purchased the said suit property on 25.10.2012, from one V.R.Vaiyali. Perusal of the road right agreement dated 15.12.2008, shows that the agreement was entered into between Aruna Marketing Firm, represented by its Managing Partner-A.Rajendran and R.Padmavathi, the vendor of the respondent. It is mentioned that Aruna Marketing Firm was owning properties in Survey Nos.64/1 & 65/1 and in other Survey numbers. R.Padmavathi, was owning lands in Survey Nos.57/1, 61/2 and 54/1 to an extent of 3.13 acres and therefore, the said R.Padmavathi agreed to pay Rs.2,00,000/- for the pathway road right. It is said that the pathway right was created in Survey Nos.64/1 & 65/1 and other Survey numbers to reach the lands of Padmavathi in Survey Nos.57/1, 61/2 and 54/1. This right cannot convey any right in the suit property, which was purchased by

Padmavathi, on 15.12.2008. The respondent cannot claim the aforesaid right of pathway. Knowing fully well, that the respondent has no right to use the pathway, she filed the suit without due process of law. Therefore, a petition in I.A.No.4 of 2019 was filed to reject the claim. The respondent contested the claim and the learned Principal District Munsif, Salem, without considering the merits of the case, dismissed the I.A.No.4 of 2019 in O.S.No.403 of 2019 on 28.10.2020. Against the said order, the present Civil Revision Petition is preferred.

3. The learned counsel for the petitioner reiterated the averments made in the petition, to reject the plaint and submitted that the respondent cannot claim right in the pathway in Survey Nos.64/1 & 65/1 belong to the petitioner to reach her suit property. It is further submitted that this aspect has not been considered by the learned Principal District Munsif, Salem and wrongly dismissed the petition for rejection of plaint and prayed for setting aside the order dated 28.10.2020 in I.A.No.4 of 2019 in O.S.No.403 of 2019, passed by the learned Principal District Munsif, Salem.

4. It is seen from the averments made in the plaint that the respondent is the purchaser of the suit property from Padmavathi under a sale deed dated 24.08.2017. The said Padmavathi and Rajendran had executed the aforesaid pathway agreement dated 15.12.2008. The petitioner is the owner of the adjoining land on the western side of the suit property. He purchased the property from Rajendran on 25.09.2009. In the sale deed dated 24.08.2017, executed in favour of the respondent, the said Rajendran is also one of the attestor. The vendor of the respondent is already enjoying the road in Survey Nos.64/1 and 65/1 to reach the suit property. After purchasing the suit property the respondent is also using the road running in Survey Nos.64/1 and 65/1 and other Survey numbers. On 28.08.2019, the petitioner prevented the respondent from reaching her property through the road on Survey Nos.64/1 and 65/1. With this background, the suit was filed to declare the respondent's pathway right through the suit road running in Survey Nos.64/1 and 65/1 belonging to the petitioner and other Survey numbers as described in registered road right agreement dated 15.12.2008.

5. The perusal of road right agreement dated 15.12.2008 shows that this agreement had been entered into between Rajendran and Padmavathi, in certain Survey numbers, including Survey Nos.64/1 and 65/1. The sale deed dated 25.09.2009 also refers about the existence of the road in Survey Nos.64/1 and 65/1. The plaint description of the property also explains about existence of the road in the Survey Nos.64/1 and 65/1. The issue now is whether the respondent, who is the subsequent purchaser from the former owner Padmavathi is entitled to use the pathway in Survey Nos.64/1 and 65/1. This right is denied by the petitioner and claims that the respondent has no right, because no right had been created in the pathway agreement to reach the suit properties of the respondent. However, it appears from the reading of the plaint, that there is a dispute with regard to the right of the respondent for using the pathway in Survey Nos.64/1 and 65/1 to reach the suit property. The petitioner and the respondent have made out a *prima-facie* case to claim right in the road way in Survey Nos.64/1 and 65/1, as seen from the road agreement and the sale deed of the petitioner and the respondent. This dispute should be decided to find out whose claim is correct. Only after examination of the petitioner and the respondent, with

reference to the documents and other witnesses, it could be decided. There is no case made out for rejection of plaint in O.S.No.403 of 2019, under any of the provisions under Order 7 Rule 11 of C.P.C.

6. Therefore, this court finds no reason to interfere with the order dated 28.10.2020 in I.A.No.4 of 2019 in O.S.No.403 of 2019, passed by the learned Principal District Munsif, Salem. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

15.09.2021

To

1. The Principal District Munsif,
Salem.
2. The Section Officer,
VR Section,
High Court of Madras.

C.R.P.(P.D).No.1880 of 2021

G.CHANDRASEKHARAN.J,

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