

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.2382 of 2019
and
C.M.P.No.15536 of 2019

1.P.S.Sriramulu
2.Panneerselvam
3.Senthil
4.Kevarappan
5.Arul

... Petitioners / Appellants / Respondents

Vs

1.Kulandaiyammal
2.Pachiyappan
3.Thirugnanam
4.Thirumal
5.Ramakrishnan

... Respondents / Respondents / Petitioners

Civil Revision Petition filed under Article 226 of the Constitution of India, to set aside the fair and decreetal order dated 21.03.2019 made in C.M.A.No.4 of 2017 on the file of the Subordinate Court, Uthangarai confirming the fair and decreetal order dated 31.07.2017 made in I.A.No.26 of 2017 in O.S.No.6 of 2017 on the file of the District Munsif cum Judicial Magistrate Court, Pochampalli.

For Petitioners	..	Mr.S.Thangavel
For R2	..	Mr.A.Manikandan
For R1, R3 to R5	..	No appearance

ORDER

The defendants in O.S.No.6 of 2017 now pending on the file of the District Munsif – Judicial Magistrate Court, Pochampalli, are the revision petitioners herein. They are aggrieved by an order dated 21.03.2019 in C.M.A.No.4 of 2017 passed by the learned Subordinate Judge, Uthangarai. The said Civil Miscellaneous Appeal was also filed by the revision petitioners herein questioning the order dated 31.07.2017 in I.A.No.26 of 2017 passed by the learned District Munsif – Judicial Magistrate Pochampalli.

2.It is to be mentioned that the suit in O.S.No.6 of 2017 had been filed for a mandatory injunction directing removal of particular compound wall, said to have been put up by the revision petitioners / defendants and it is also complained that the revision petitioners / defendants have trespassed into the suit property to build up a further building which the revision petitioners claim to actually be a temple. As seen from the nature of the reliefs, grant or otherwise of the said reliefs

would naturally depend on evidence adduced by the plaintiffs and the defendants.

3.Let me therefore not enter into a deeper discussion touching on the respective merits with respect to the construction of the wall and with respect to whether the plaintiffs have a right to prevent such construction of wall and also any other allied interests of the respective parties. It is claimed by the plaintiffs that there is a well which, if the wall is built would become inaccessible since the wall would cut across the pathway which was the way to access the well.

4.It is the case of the revision petitioners / defendants that the well is defunct and that the pathway is not the only way to access the well and that there is another pathway and that the wall is built within the property of the revision petitioners / defendants. Once again the aforesaid averments would only imply that evidence is required to determine any of the above issues.

5.Pending the said suit, the plaintiffs had filed I.A.No.26 of 2017 under Order XXXIX Rules 1 and 2 of CPC seeking interim injunction

against the defendants from raising the wall to any further height then it was at the time of institution of the suit. Interim injunction was granted. The defendants filed Civil Miscellaneous Appeal. The Civil Miscellaneous Appeal was dismissed. This has led to the filing of the present Revision Petition.

6. Heard argument advanced by Mr.S.Thangavel, learned counsel for the revision petitioners / defendants in the suit and Mr.A.Manikandan, learned counsel for the respondents / plaintiffs in the suit.

7. It is also brought to my notice that the plaintiffs had also filed I.A.No.27 of 2017 under Order XXVI Rule 9 of CPC for appointment of an Advocate Commissioner. An Advocate Commissioner had been appointed and he had filed a preliminary report for which objections had also been filed. The report of the Advocate Commissioner has had a strong bearing on the minds of the learned District Munsif – Judicial Magistrate and the learned Subordinate Judge while granting the order of injunction and refusing to vacate it in an appeal.

8. Unfortunately, the records do not point to the filing of a final report of the Advocate Commissioner. Naturally, since the report of the Advocate Commissioner has been one of the basis for grant of interim relief in favour of the plaintiffs, the said report will also have to be tested during the course of trial by summoning the Advocate Commissioner, if the parties feels that step is required, and by putting relevant questions to him. All these aspects again point out that it would only be advisable that the parties are permitted to graze the witness box and subject themselves for examination on the issues raised by them before the Court below.

9. Therefore, I am not inclined to interfere with the order even though I had not entered into a discussion on merits. I would rather relegate both the plaintiffs and the defendants back to the Trial Court. The written statement has been filed. Therefore, the learned District Munsif – Judicial Magistrate, Pochampalli, may take upon himself/herself since the suit itself is pending for the past four years and since the issues would only result in further acrimonious situations arising between the parties, to frame issues at the earliest and invite the parties to adduce evidence and record the evidence and give a finality to the suit itself. If it is felt that the Advocate Commissioner has a further

report to be filed, the same may be received, but again subject to opportunity being granted to either one of the parties who has objections to the same, to file objections and further opportunity to the parties, if they seek, to summon the Advocate Commissioner to speak about the preliminary report and also about any other report filed by him.

10. It would only be appropriate that a few directions are also given to the learned District Munsif – Judicial Magistrate Pochampalli with respect to the manner in which the trial should be conducted after framing of issues. If the suit is ripe for trial, it could be accommodated in the Special List. The learned District Munsif – Judicial Magistrate Pochampalli may, during the course of trial, conduct it on a day to day basis and if adjournments are sought grant a maximum of three working days in between any two adjournments. The learned District Munsif – Judicial Magistrate Pochampalli may also restrict grant of adjournments for not more than two occasions for the very same reason. If the above method is followed the trial could be an easily controlled and there could be end with respect to recording of evidence within a short period of time. However, taking into consideration the various other factors which might necessitate filing of Interlocutory Applications, a direction is given

to the learned District Munsif – Judicial Magistrate Pochampalli to dispose of the suit in O.S.No.6 of 2017 on or before 30.09.2021 which is an extreme outer date.

11.With the above observations, the Civil Revision Petition is disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

29.06.2021

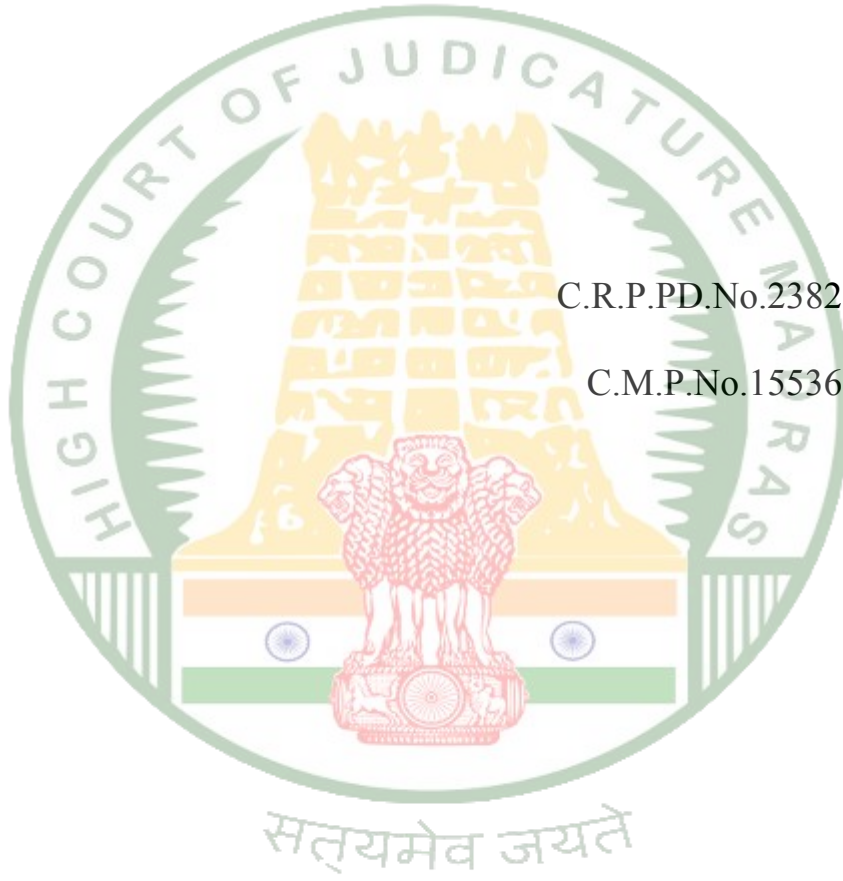
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