

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.972 of 2017

and

CMP.No.4817 of 2017

C. Dilliraj,
S/o.P.Chinnanan

... Petitioner

Vs.

1. R.Saraswathi, S/o.Ranganathan
2. R.Gunasekaran, S/o.Ranganathan
3. R.Palani, S/o.Ranganathan
4. R.Venkatesan, S/o. Ranganathan
5. R.Babu @ Pavalakannan,
S/o.Ranganathan
6. R.Velmurugan,
S/o.Ranganathan
7. Vijaya Samundeswari

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the petition and order dated 25.01.2017 passed by the Hon'ble VIII Assistant City Civil Judge at Chennai in I.A.No.8449 of 2015 in O.S.No.3369 of 2015.

For Petitioner : Mr.R.Chandrasudan

For Respondents : Mr.A.M.Loganathan for R1 to 5 &7

ORDER

This Civil Revision Petition is directed as against the order dated 25.01.2017 passed by the VIII Assistant City Civil Judge at Chennai in I.A.No.8449 of 2015 in O.S.No.3369 of 2015, thereby closing the injunction petition for the reason that the suit is ripe for trial.

2. The learned counsel for the petitioner submitted that the petitioner is the plaintiff and the respondents are the defendants. The petitioner herein filed a suit for mandatory injunction directing the respondents to demolish the balcony and projection put up on the 3 feet suit schedule pathway and and also seeking for permanent injunction restraining the respondents from causing hindrance to the petitioner's ingress and egress to the suit schedule property through 3 feet exclusive pathway.

3. The court below considered the injunction petition and granted an *ex parte* injunction. In fact, the court below, while granting interim injunction, has also appointed the Advocate Commissioner to inspect the suit property, since the suit is for mandatory injunction directing the respondents to demolish the balcony and projection put up on the 3 feet suit

schedule pathway. However, the court below by order dated 25.01.2017, passed the following order:

“Suit is ripe for trial at this stage this petition is unnecessary and closed.”

4. A perusal of the plaint would reveal that the petitioner sought for permanent injunction restraining the respondents, their men, servant, agents or any person claiming through them from in any manner causing hindrance to the petitioner's ingress and egress to suit schedule property through 3 feet exclusive pathway.

5. Therefore, the court below ought not to have closed the petition without passing orders on merits. In fact, the respondents also filed their counter in the injunction petition. Therefore, the order passed by the Court below is a non-speaking order and is liable to be set aside.

6. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.8449 of 2015 in O.S.No.3369 of 2015 dated 25.01.2017 is hereby set aside. The matter is remanded back to the Court below for fresh

consideration in I.A.No.8449 of 2015 on merits and in accordance with law.

The Court below is directed to dispose of the injunction petition as well as the suit within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

No costs.

30.03.2021

Speaking/Non-speaking order
Index : Yes/No
kal



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G.K.ILANTHIRAIYAN,J.

Kal

To

The VIII Assistant City Civil Judge
Chennai



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