

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

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

C.R.P.(PD)No.4262 of 2018
and C.M.P.No.23362 of 2018

1. Srinivasan
2. Padmavathi
3. Sekar
4. Sivagami
5. Kizore Kumar ... Petitioners

1. Santhakumari Ganesan
2. Kumarappan
3. C.V.Selvaraj ... Respondents

Vs.

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 07.09.2018 passed in I.A.No.341 of 2018 in O.S.No.21 of 2018 on the file of the District Munsif Court, Rasipuram and pleaded to allow the petition in I.A.No.341 of 2018 in O.S.No.21 of 2018 and thereby reject the plaint in O.S.No.21 of 2018 by allowing this CRP.

For Petitioners : Mr.K.Sridhar

For Respondents

For R1 : Mr.C.Anbu
For Mr.M.R.Thangavel
For R2 : Not ready in notice
For R3 : No appearance.

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 07.09.2018 passed by the learned District Munsif, Rasipuram, in I.A.No.341 of 2018 in O.S.No.21 of 2018, thereby dismissing the petition for rejection of plaint.

2. The petitioners are the defendants 1 to 5 and the first respondent is the plaintiff. The first respondent filed suit in O.S.No.21 of 2018 for permanent injunction restraining the petitioners from enjoying the pathway by the first respondent. While pending the suit the petitioners filed petition in I.A.No.341 of 2018 for rejection of plaint on the ground that the first petitioner herein had already been filed writ petition before this Court in W.P.No.19725 of 2017 for direction directing the officials concerned to remove the encroachment in Oodai Poramboku comprised in survey No.73-2C situated at Palanthinnipatti Village, Rasipuram Taluk, Namakkal District

and also direct the concerned officials to cancel the patta No.130 stands in the name of the first respondent herein. The said writ petition is pending before this Court. Suppressing the said fact, the first respondent filed the present impugned suit claiming easementary right over the very same property. The trial Court dismissed the said petition as against which, the present Civil Revision Petition.

3. The learned counsel appearing for the petitioner would submit that the suit property is classified as Oodai Poramboku and therefore, the suit itself is not maintainable and liable to be rejected. Therefore, the petitioners filed the petition to reject the plaint and the trial Court without considering the same, dismissed the petition.

4. On perusal of the plaint in O.S.No.21 of 2018 revealed that the first respondent herein filed the suit for permanent injunction in respect of the suit property. Admittedly, the writ petition filed by the first petition in W.P.No.19725 of 2017 is still pending before this Court. That apart, the title of the suit property cannot be decided in the writ petition as such, the

pendency of the writ petition is not an impediment for the first respondent to file the present suit that too for injunction. Further the cause of action of the suit is bundle of facts and the suit cannot be rejected in its inlimine. Therefore, the trial Court rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below.

5. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

29.06.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

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To

1. The District Munsif,
Rasipuram,
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

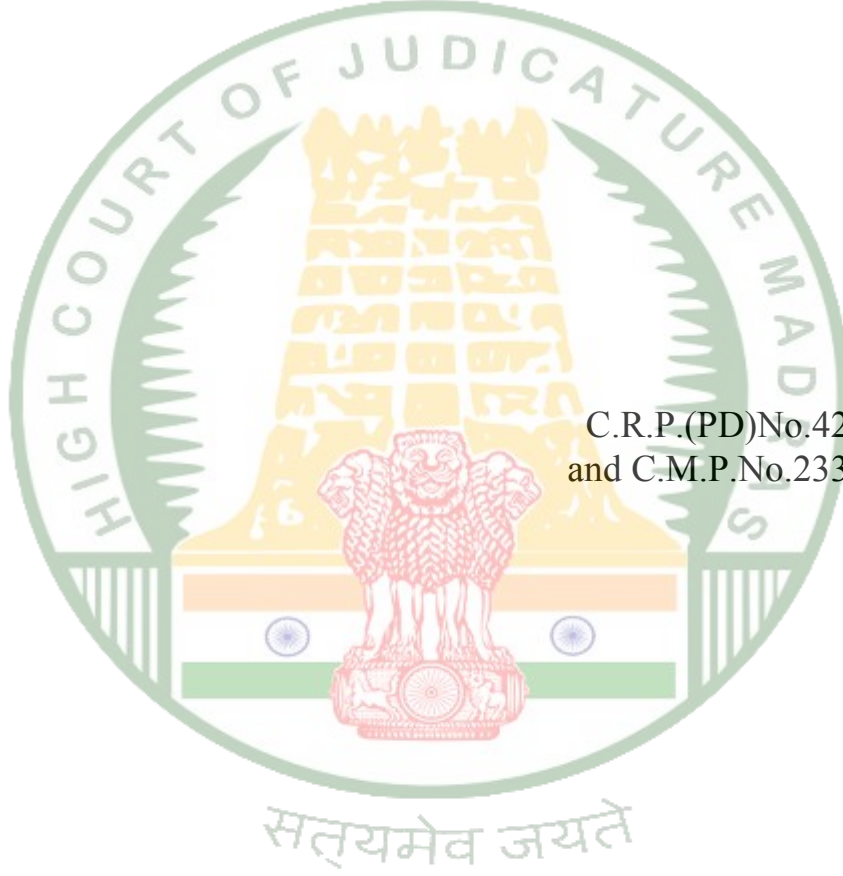


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G.K.ILANTHIRAIYAN, J.

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