



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD) (MD) Nos.1839 & 1840 of 2021
and
C.M.P.(MD) No.9874 of 2021

1.P.Kandhan
2.T.Pandiammal
3.P.Vijayakumari

.. Petitioners/Petitioners/
Plaintiffs in both cases
-vs-

1.P.K.N.Vidyasala Sangam Committee,
Rep., by its President, Sri.R.Vijayarajan,
Having his office at Door No.308,
Thirumangalam Road, Madurai District,
and doing business at Usilampatti Road,
Thirumangalam, Madurai District.

2.P.K.N.Vidyasala Sangam Committee,
Rep., by its Secretary, J.Ganesh,
Having his office at Door No.308,
Thirumangalam Road, Madurai District,
and doing business at Usilampatti Road,
Thirumangalam, Madurai District.

.. Respondents/Respondents/
Defendants in both cases

Prayer :- Petitions filed under Article 227 of the Constitution of India to set aside the order dated 19.08.2021 passed in I.A.Nos.63 & 64 of 2021 in O.S.No.27 of 2010 on the file of the Principal District Munsif Court, Thirumangalam.

For Petitioners : Mr.Arjun
for Mr.N.Vallinayagam

COMMON ORDER

The plaintiffs, whose applications to appoint an Advocate Commissioner to measure the suit property and the respondent/school campus with the help of the Surveyor and to file a report along with



the plan and to reopen the evidence of the plaintiffs to examine additional witnesses were dismissed, are the revision petitioners before this Court.

2.The brief facts are as follows:-

2.1.The plaintiffs herein had filed the suit in O.S.No.27 of 2010 on the file of the District Munsif, Thirumangalam for a bare injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The suit property is a pathway measuring 106 feet North-South on the West and 107.6 feet North-South on the East and 15 feet on the East-West both on the North and the South and comprised in S.No.20/2B, T.S.No.285, Maravankulam Village, Thirumangalam within specified boundaries.

2.2.The case of the plaintiffs is that this pathway is the exclusive pathway of the owners of the house sites on the East and West of the pathway. The defendants' properties are situate on the South of the pathway and the pathway ends at the compound wall of the defendants' properties.

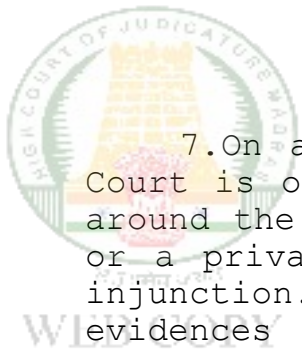
2.3.It is the case of the plaintiffs that the defendants are attempting to open out a doorway on this southern wall (the northern wall of the defendants) and on 10.12.2009, the defendants, with the help of the police officials, had attempted to interfere with the possession of the pathway, which was successfully thwarted. Therefore, the plaintiffs had come forward with the suit in question.

3.The 2nd defendant, on entering appearance, had filed a written statement *inter alia* contending that they also have a right through the suit pathway. Apart from which, the 2nd defendant had taken other defences.

4.When the evidence on both sides concluded, the plaintiffs have come forward with the impugned application to reopen the evidences. An application was also taken to appoint an Advocate Commissioner.

5.The learned District Munsif, Thirumangalam had dismissed the said applications stating that the attempt of the plaintiffs' was only to collect evidence and after the conclusion of the examination of witnesses, the same is nothing but an attempt to protract the proceedings. Challenging these orders, the plaintiffs are before this Court.

6.Heard the learned counsel for the petitioners and perused the records.



7. On an examination of the pleadings on the either side, this Court is of the view that the dispute between the parties revolves around the issue as to whether the suit pathway is a common pathway or a private pathway and the relief sought for is one for a bare injunction. The plaintiffs and the defendants have concluded their evidences and at this stage, there is no necessity to examine further witnesses, since it is for the plaintiffs to prove their case, viz., their exclusive possession to the suit pathway.

8. In the result, both the Civil Revision Petition are dismissed. Considering the fact that the matter is now at the stage of arguments, a direction is given to the learned District Munsif, Thirumangalam to conclude the proceedings within a period of one month from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Principal District Munsif, Thirumangalam.

+1 CC to M/s.N. VALLINAYAGAM, Advocate (SR-35957[F] dated 25/11/2021)

C.R.P.(PD) (MD) Nos.1839 &
1840 of 2021

Dated: 25.11.2021

MGJ(13.12.2021) 3P 3C