



C.M.A.No.2286 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 19.10.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.2286 of 2022

and

C.M.P.No.17639 of 2022

M/s.Pridhvi Asset Reconstruction
& Securitisation Company Limited,
rep. by its Vice President,
Mr.J.Malliah,
having its main office at
D.No.1-55, Raja Praasadamu,
IV Floor, Wing 1,
Plot No.6, 6A, 6B, Botanical Garden Road,
Kondapur,
Hyderabad – 500 084. ... Appellant/Petitioner/Plaintiff

Vs.

1.O.Vasanth

2.M.Vidhya

3.S.Parvathi



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4.M/s.D.R. Logistics (P) Limited,
formerly known as
Devadoss Reddy Logistics Private Limited,
rep.by its Managing Director,
Mr.R.Devadoss,
435/25, Municipal Complex,
T.H.Road,
Kalaidipet,
Chennai – 600 019. ...
Respondents/Respondents/Defendants

Prayer: Civil Miscellaneous Appeal is filed under Order XLIII (1) ®
of the Code of Civil proedure against the Fair and Decreetal order of
the learned IV Additional District Judge, Thiruvallur, at Ponneri,
dated 30.08.2022 in I.A.No.3 of 2019 in O.S.No.268 of 2019.

For Appellant : Mr.Srinath Sridevan

For Respondents : Mr.A.E. Ravichandran
Caveator for R1 to R3

Ms.V.Vijayalakshmi
Advocate Commissioner

JUDGMENT



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Aggrieved by the dismissal of their application seeking an order of interim injunction restraining the respondents/defendants, their men, servants, agents, from interfering with the appellant's right to use the suit pathway to access the “A” Schedule property, the appellant is before this Court.

2.The above proceedings arise out of the suit O.S.No.268 of 2019 on the file the learned IV Additional District Judge, Thiruvallur, at Ponneri. The said suit is filed by the plaintiff for the following reliefs:

“(1)To declare the easementary right of pathway over the schedule B property to reach to and return from the plaintiff's A schedule property,

(2)to pass a Decree for permanent injunction, restraining the defendants from interfering with the



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*plaintiff's right of using the schedule B property to reach
to and return from the plaintiff's A schedule property.?*

3. Along with the suit, the appellant has also filed I.A.No.3 of 2019 seeking an *ad interim* injunction in respect of the suit pathway. It is the case of the appellant that the suit “A” Schedule property and the other properties originally belonged to the 4th respondent. The 4th respondent has availed a loan from the Bank of India and as a security, had mortgaged the “A” Schedule property. Thereafter, the loan came to be classified as a Non Performing Asset and the 4th respondent did not repay the loan. Therefore, the Bank had initiated proceedings before the Debt Recovery Tribunal III, Chennai, in O.A.No.21 of 2012 for recovery of money.

4. At this stage, the Bank had assigned the debt to the appellant under the Assignment Deed dated 31.03.2013 registered as



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Doc.No.3755/2012. Thereafter, O.A.No.21 of 2012 was decreed in favour of the petitioner and Recovery Certificate in D.R.C.No.137/2013 has been issued in favour of the petitioner. The Recovery Officer had thereafter initiated steps to bring the “A” Schedule property for Sale. By order dated 06.09.2018 in I.A.No.322 of 2018 in DRC.No.137/2013, the Recovery Officer had taken possession of the “A” Schedule property. On 19.09.2018, physical possession of the property was handed over to the appellant through the Advocate Commissioner.

5.It is the case of the appellant that the “A” Schedule property is connected to the main road situate on the Western side of the suit property through the pathway described as the “B” Schedule property. Except for the “B” Schedule property, there is no other access to the “A” Schedule property to the road. From the date of taking possession of the “A” Schedule property they have been using the “B” schedule pathway to reach their property. However, all of a sudden, in the year



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2019, the respondent had locked the main gate of the suit pathway, thereby, restraining the appellants access to the Main road. The appellant had immediately moved the Recovery Officer, By order dated 11.04.2019, the Recovery Officer had directed the respondent to remove the lock and the obstacles. However, despite orders of this Court, the respondent have not removed the lock. Therefore, the appellant has come forward with the suit O.S.No.268 of 2019 before the learned District Judge for the relief stated supra. I.A.No.3 of 2019 was also filed for an interim injunction restraining the respondent from interfering with the appellant's use of the pathway. The learned Judge by his order dated 10.07.2019 had initially granted an order of injunction which continued till the passing of the impugned order. However, the respondents herein are causing hindrance by placing the pathway under lock and key from time to time. Therefore, contempt proceedings were also initiated. Thereafter, the suit was transferred to the IV Additional District Judge, Thiruvallur. Later the learned District Judge refused to extend the interim order and thereafter, the



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learned IV Additional Judge, Ponneri, passed final orders on 30.08.2022 dismissing the application. Challenging the same, the petitioner is before this Court.

6.The learned Judge has rejected the application on the ground that without documents on mere pleading the relief cannot be granted, since the appellants have not proved that the “B” Schedule property is the only approach/reach to the “A” Schedule property. Challenging the same, the petitioner has filed the above appeal.

7.Considering the limited scope in the Interlocutory Application, this Court by order dated 18.10.2002 was pleased to appoint an Advocate Commissioner to visit the property on the very same day and to submit her report.



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8.The Advocate Commissioner has visited the property and has submitted her report. A mere perusal of the report with the enclosed photographs would clearly show that a well defined pathway leading from the main road which is the T.H. Road through the pathway which has been shown as ABCD measuring about 50 feet at Point C, 52 ½ feet at Point D and 49 feet at Point B beyond the gate. At Point B there is a gate which has been installed. Therefore, from the report and the Plan, it is evident that there is a well defined pathway which has been described as the “B” Schedule property. Whether the appellant has an easementary right to the same is an issue that has to be considered after the parties let in evidence.

9.Suffice it to state that since the petitioners were having the benefit of interim orders till the dismissal of the I.A.No.3 of 2019 and in the light of the report of the Advocate Commissioner, this Civil Miscellaneous Appeal is allowed and the orders passed in I.A.No.3 of



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2019 in O.S.No.268 of 2019 is set aside. There shall be an order of interim injunction till the disposal of O.S.No.268 of 2019 pending on the file of the learned IV Additional District Judge, Thiruvallur, at Ponneri. The Advocate Commissioner's Report and Plan and Photographs are taken on file and they shall form part of the suit records. It is open to the parties to file objections to the same before the learned IV Additional District Judge, Thiruvallur, at Ponneri.

10.The Court places on record its appreciation for the prompt and efficient work rendered by the Advocate Commissioner Ms.Vijayalakshmi. The appellant shall pay an additional remuneration of Rs.30,000/- (Rupees thirty thousand only) to her. The learned IV Additional District Judge, Thiruvallur, at Ponneri, shall dispose of the suit within a period of three months from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

19.10.2022



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Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps
To

The IV Additional District Judge,
Ponneri.
Thiruvallur.

P.T. ASHA, J,

mps

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and
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