



CRP(MD)No.1430 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1430 of 2022
and
CMP(MD)No.5935 of 2022

1.Sundar Raj

2.Christal Raj

: Petitioners

Vs.

1.John Christopher

2.David Raj

: Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records pertaining to the fair and decreetal order dated 20.11.2021 passed by the learned Principal District Munsif, Kuzhithurai, in I.A.No.2 of 2021 in O.S.No.161 of 2021 and set aside the same.

For Petitioners : Mr.M.Mohanaraj

For Respondents : Mr.S.C.Herold Singh

for R.1



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ORDER

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2.The first respondent / plaintiff has filed the suit in O.S.No.161 of 2021 for a bare injunction as against the petitioners and the second respondent. The suit was filed on 17.11.2021 and along with the suit, an application in I.A.No.2 of 2021 under Order 26 Rule 9 CPC was filed by the first respondent / plaintiff to appoint an Advocate Commissioner. The trial Court, by order dated 20.11.2021, allowed the application on the ground raised by the plaintiff that the defendants are attempting to close the common pathway and are trying to form a new road on the southern side of the suit schedule property. Challenging the same, the petitioners / defendants 1 & 3 have filed this revision.

3.Learned Counsel for the petitioners submitted that the trial Court has allowed the application filed under Order 26 Rule 9 CPC, without providing them an opportunity of hearing, on the date of admission itself and therefore, they are prejudiced by that order.



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4.Learned Counsel for the first respondent submitted that the defendants are attempting to close the common pathway and are attempting to form a new road on the southern side of the suit schedule property. Therefore, he has filed the interlocutory application, which was also rightly allowed by the Court below. He further submitted that if the Commissioner is not visiting the property within a reasonable time, then there are every chances for the defendants in creating alterations in the suit schedule property and therefore, even he is prepared to concede for allowing this revision to the extent of remanding the matter back to the trial Court for fresh consideration, however, with a direction to the trial Court to dispose of the interlocutory application within a stipulated time limit and with a further direction to the defendants not to make any alterations till such time.

5.On the fair submissions made on behalf of the first respondent, this revision petition is disposed of on the following terms:-

- the impugned order passed in I.A.No.2 of 2021 in O.S.No.161 of 2021, dated 20.11.2021 is set aside and the matter is remitted back to the file of the Principal District Munsif Court, Kuzhithurai, for fresh consideration;
- the petitioners shall file their counter statement for the interlocutory



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B.PUGALENDHI, J.

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application, if any, before the trial Court, within a period of two weeks from the date of receipt of a copy of this order;

- the trial Court shall dispose of I.A.No.2 of 2021, after providing sufficient opportunity to the parties, within a further period of two weeks therefrom;

- till the disposal of I.A.No.2 of 2021, the parties are directed to maintain *status-quo*, as on date.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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11.08.2022

To

The Principal District Munsif,
Kuzhithurai.

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