



CRP(PD)(MD)No.1753 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1753 of 2022

and

CMP(MD)No.7720 of 2022

1. M.Paul Raj
2. P.Rejina Baby

... Petitioners

versus

1. S.Murugesh
2. Janahi Murugesh
3. Neela Monikandan
4. Sudha
5. Kasthuri
6. Esther Rani

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 12.07.2022 made in I.A.No.3 of 2021 in O.S.No.2 of 2021 on the file of District Munsif-cum-Judicial Magistrate Court, Bhoothapandy.

For Petitioners : Mr.V.George Raja

For R1 to R4 : No appearance



For R5 : No appearance
For R6 : Mr.P.T.Ramesh Raja

ORDER

This Civil Revision Petition is filed against the order dated 12.07.2022 made in I.A.No.3 of 2021 in O.S.No.2 of 2021 on the file of District Munsif-cum-Judicial Magistrate Court, Bhoothapandy.

2. The petitioners herein are plaintiffs in O.S.No.2 of 2021 pending on the file of the learned District Munsif cum Judicial Magistrate, Bhoothapandy. They filed the above suit for the following relief:

“(i) A decree for declaration that a 10' width pathway is available on the north of plaintiffs' area that is on the north of 'ABJX'

(ii) A decree for declaration that the decree passed O.S.No.163 of 2012 dated 08.11.2017 on the file of District Munsif cum Judicial Magistrate, Boothapandy is not executable and void;

(iii) A decree for mandatory injunction directing the defendants 1 to 6 to surrender the encroached portion



of the 10' width pathway within the time frame and on their failure, a decree to execute the same through Court and to recover the cost from the defendants;

(iv) A decree for permanent injunction restraining the defendants, their men, servants, agents or anybody claiming under them from making any construction in the encroached area.”

The plaintiffs have also filed an interlocutory application under Order 26 Rule 9 C.P.C. to appoint an Advocate Commissioner to inspect the suit schedule property with the help of a Surveyor in I.A.No.3 of 2021. The said application was dismissed by the trial Court by its fair and decreetal order dated 12.07.2022. Aggrieved over the same, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the petitioners submits that the first petitioner/first plaintiff purchased 3 cents of land on 19.09.1999 from one Micheal Antony and subsequently, he transferred the same to his wife 2nd petitioner/2nd plaintiff. On the same day, the first petitioner's brother has also purchased 7 cents of land from the



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said Micheal Antony in his name and his wife's name jointly. Though the plaintiffs and the first plaintiff's brother owned 10 cents, however, lesser area is available on the ground. He further submits that 6th respondent/6th defendant is a henchwoman of the 3rd defendant. In fact, in her sale deed, 10' width pathway is available, which extends upto one Mariammal's land, which is on the south of her area. But, originally, 4' feet area is left out and the remaining area is encroached by the 6th defendant. Therefore, the appointment of an Advocate Commissioner is necessary to inspect the suit property and to find out the encroached portion of the pathway.

4. The learned counsel appearing for the 6th respondent submits that in the year 2012, the 6th respondent herein filed a suit in O.S.No. 163 of 2012 on the file of the learned District Munsif cum Judicial Magistrate, Boothapandi, seeking the relief of permanent injunction and also to declare the northern portion of the petitioners' property as a pathway and to remove the encroachments made therein. In that suit, a



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specific stand was taken by the petitioners herein that there is no such pathway, but, in the course of evidence, the first petitioner has admitted that there is a only pathway for the 6th defendant to reach her property. Thereafter, the decree was passed in favour of the 6th respondent. Aggrieved over the same, the petitioners preferred an appeal suit in A.S.No.89 of 2017 before the learned Principal Subordinate Judge, Nagercoil, where, they took a plea that adjacent owners were not added as parties. The said issue was also decided in the appeal suit and the appeal suit in A.S.No.89 of 2017 was ultimately dismissed by Judgment and Decree dated 07.03.2019. Aggrieved over the same, the petitioners herein filed a Second Appeal, which was also dismissed, by Judgment and Decree dated 07.01.2020. After the dismissal of the second appeal, the 6th respondent/6th defendant filed an Execution Petition in E.P.No.6 of 2022. In order to defeat the Execution Proceedings, the petitioners herein have filed the present suit.



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5. This Court considered the rival submissions made and perused the materials available on record.

6. The petitioners/plaintiffs have filed the above suit in O.S.No.2 of 2021 to declare a portion marked as 'ABJX' as a pathway and the decree passed in O.S.No.163 of 2012 dated 08.11.2017 on the file of the District Munsif cum Judicial Magistrate, Boothapandy is not executable and void.

7. The main contention of the petitioners is that the respondents 1 to 6 are encroachers of a pathway.

8. Earlier, 6th respondent herein filed a suit in O.S.No.163 of 2012 against the petitioners herein seeking the relief to remove the encroachment made by them measuring 5 feet width on the pathway.



9. On perusal of the documents, it is seen that in the suit filed by the 6th respondent, a specific stand was taken by the petitioners herein that there is no such pathway, but, in the course of evidence, the first petitioner has admitted that there is a pathway for the 6th respondent to reach her property. Further, the sale deed executed in favour of the 6th respondent disclose a 10 feet pathway, while the sale deed executed in favour of the petitioners confers title including the area occupied as pathway. Therefore, a decree was passed in favour of the 6th respondent on 08.11.2017, which was confirmed by this Court in SA(MD)No.572 of 2017, by Judgment and Decree dated 07.01.2020. When the Execution Petition is pending, the present suit is filed that the earlier decree is not executable. This Court is not inclined to interfere with the order of the trial Court on the grounds raised in support of this petition.

10. Accordingly, the Civil Revision Petition is dismissed. It is always open to the petitioners to establish their case in the manner known to law. The Trial Court, namely, District Munsif-cum-Judicial



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Magistrate, Bhoothapandy, is also directed to expedite the trial in O.S.No.2 of 2021 and conclude the same within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

10.11.2022

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Index : Yes / No.

Internet: Yes / No.

To

1. The District Munsif-cum-Judicial
Magistrate Court,
Bhoothapandy.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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