



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P (MD)No.1764 of 2017 &

CMP (MD)No.9494 of 2017

WEB COPY

1.Pannerselvam
2.Asokkumar

... Petitioners/Respondents
/Defendants

Vs.

1.Thiravaiaam
2.Anandan
3.Rajaram
4.Vijayakumar
5.Ravi

... Respondents/Petitioners
/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order in IA.No.1304 of 2016 in OS.No.18 of 2008 on the file of the Additional District Munsif Court, Srivilliputhur dated 19.06.2017 and allow the Civil Revision Petition.

For Petitioners : Mrs.P.Rohini
for Mr.P.Subbaraj

For Respondents : Mr.P.Samuel Gunasingh

ORDER

This revision petition is filed to set aside the order in IA.No.1304 of 2016 in OS.No.18 of 2008 on the file of the Additional District Munsif Court, Srivilliputhur dated 19.06.2017.

2. I.A.No.1304 of 2016 was filed by the respondents / plaintiffs under Order 6 Rule 17 of CPC and Section 151 of CPC to amend the plaint. Originally the plaintiffs filed the suit for declaration, declaring that II schedule of suit property is a common pathway for the plaintiffs and the defendants, and not to disturb the plaintiffs from letting the water through pipes into the pathway and for permanent injunction restraining the defendants from interfering with the usage of the II schedule of suit property as common pathway. The learned Additional District Munsif, Srivilliputhur has allowed the Interlocutory Application with costs. Challenging the said order, petitioners / defendants are before this Court.



3. Heard the learned counsel appearing on both sides and perused the materials available on record.

4. Insofar as the prayer viz., permanent injunction is concerned, it cannot be granted, however, the Court can grant injunction not to disturb the plaintiffs from letting water through pipe into the III schedule of suit property. Admittedly, the III schedule of suit property is a part of the II schedule suit property. The respondents/plaintiffs have not sought for any right in the alternative prayer. Without declaration of easementary right, the respondents/plaintiffs cannot amend the plaint for permanent injunction, as prayed in the amendment petition.

5. However, it is for the Trial Court to decide, whether the pathway is common for both the plaintiffs and defendants and whether the plaintiffs are entitled to get permanent injunction. The petitioners/defendants had filed a written statement and contended that the plaintiffs have no right in the II schedule of suit property. The Interlocutory Application was allowed on the ground that, the alternative prayer is related to the prayer sought for by the plaintiffs in the suit. The plaintiffs want to amend the prayer, but without any declaration of easementary right. the plaintiffs cannot seek for permanent injunction.

6. In fine, the Civil Revision Petition is disposed of and the matter is remanded back to the Trial Court with liberty to the respondents/plaintiffs to file amendment petition for declaration. In such event, the period of limitation for filing the amendment petition is exempted. No Costs. consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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To

The Additional District Munsif,
Srivilliputhur

+1 CC to M/s.P.SUBBARAJ, Advocate (SR-6106[F] dated 15/02/2022)

ORDER MADE IN
C.R.P (MD) No.1764 of 2017
14.02.2022

PKP/26.05.2022/3P/3C

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