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C.R.P.No.396 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.396 of 2021
and C.M.P.No.3411 of 2021

C.Palanivel

...Revision Petitioner/Applicant/
5th Defendant

-Vs-

1.N.Periyasamy
2.P.Prabhakaran

...Respondents/Respondents/
Plaintiffs

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.1 of 2020 in O.S.No.355 of 2017 on the file of the learned Principal District Munsif, Namakkal, dated 17.12.2020.

For Petitioner : Mr.K.Rajasekaran
for M/s.Charles Kamalesh M.Appaji

For Respondents : Mr.K.Krishna Prasad
for M/s.Sarvabhauman Associates

ORDER

The above Civil Revision has been filed to set aside the fair and decretal order passed in I.A.No.1 of 2020 in O.S.No.355 of 2017 on the file of the learned Principal District Munsif, Namakkal, dated 17.12.2020.



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2.Learned Counsel for the Revision Petitioner submitted that the Revision Petitioner has impleaded as 5th Defendant in the suit in O.S.No.355 of 2017.

3.The learned Counsel for the Revision Petitioner invited the attention of this Court to the averments in the plaint, particularly in paragraph no.5, wherein it is stated that the Plaintiff had filed the suit regarding the declaration of pathway. The pathway runs through the suit properties of Defendants 1 to 6. Even though the pathway runs through the properties of Defendants 1 to 6. Defendants 5 and 6 are not objecting to the Plaintiffs using the pathway adjacent to the lands belonging to Defendants 5 and 6 whereas, Defendants 1 to 4 are objecting to the Plaintiffs using the pathway. Therefore, the Plaintiffs had sought the declaration of a common pathway against Defendants 1 to 4 only. Defendants 5 & 6 had not objected and therefore the relief was not sought against Defendants 5 and 6.

4.In the light of the above pleadings, the learned Counsel for the Revision Petitioner submits that he had filed Petition under Order VII, Rule 11 of CPC, seeking to reject the plaint as no specific relief had been



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sought against Defendants 5 and 6. In the plaint, there is specific pleading that the pathway runs through the land belonging to Defendants 5 and 6 and they had not objected to the Plaintiff using the pathway. Therefore, the Revision Petitioner had sought to reject the plaint against the 5th Defendant and the Petition in I.A.No.1 of 2020 in O.S.No.355 of 2017 on the file of the learned Principal District Munsif, Namakkal, dated 17.12.2020.

5.Learned Counsel for the Respondents/Plaintiffs vehemently objected to the same, stating that even though in the plaint pleadings it had been clearly stated that the pathway running through the lands belonging to Defendants 1 to 6. Defendants 5 and 6 had not objected. Defendants 1 to 4 alone objected. Therefore, they had sought relief of declaration and injunction against Defendants 1 to 4. The learned Counsel for the Respondents contended that 5th Defendant remained *ex parte*. Subsequently, he filed Petition to set aside the *ex parte* and filed written statement as per the daily status of the Court of the learned Principal District Munsif, Namakkal. Originally, the suit was posted for *ex parte* evidence on 25.07.2018, on which date, the 5th Defendant had filed Petition to set aside the *ex parte* and along with that, he had filed written statement in which he had disputed the plaint averments, claiming that the pathway



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runs through his own property and is not a common pathway. Learned Counsel for the Respondents invited the attention of this Court to the specific averments in the written statement filed by the 5th Defendant. Further, the learned Counsel for the Respondents submitted that the daily status of the proceedings of the learned Principal District Munsif, Namakkal, dated 11.01.2019, wherein it is stated as follows:

“I.A.No.1010 of 2018 is allowed. Exparte order dated 05.07.2019 against 5th Defendant is set aside. Written statement of the 5th Defendant filed. Mr.P.Premkumar, Advocate files change of Vakalat for 5th Defendant. Issues call on.”

6.Subsequently as per the daily status dated 11.03.2022, the suit was part heard. Therefore, the learned Counsel for the Respondents seeks to dismiss this Petition as not maintainable.

7.In support of his contention, the learned Counsel for the Respondents relied on the following ruling:-

In the case of S.Thakeer Ali Vs. S.M.Gutha and Others reported in (2021) 5 CTC 837.

8. On consideration of the rival submission of the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondents,



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the above Civil Revision Petition if allowed, result in future legal complications. If the suit had been decreed in favour of the Respondents, in which case the Revision Petitioner herein may agitate his rights in future. To avoid such exigencies, the learned Principal District Munsif, Namakkal, is directed to proceed with the trial.

In the result, this **Civil Revision Petition stands dismissed**. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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cda
Index : Yes/No
Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

To

The Principal District Munsif Court, Namakkal.

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