



C.R.P.(PD)No.3059 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3059 of 2016

Janaki

.. Petitioner

Vs.

1.S.M.Farukh

2.S.M.Siddiq

3.S.M.Sabeerdheen

4.S.M.Naseerdeen

5.Selvam

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order, dated 01.09.2016, made in I.A.No.109 of 2014 in I.A.No.1384 of 2013 in O.S.No.418 of 2013 on the file of the District Munsif Court, Attur.

For Petitioner : M/s.Zeenath Begum

For Respondents : Mr.A.K.Kumarasamy
for Mr.R.P.Roban Chakravathy



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ORDER

O.S.No.418 of 2013 is a suit for permanent injunction on the file of the District Munsif Court, Attur. Pending the suit, an application was taken out for grant of interim injunction in I.A.No.1384 of 2013. The learned Judge appointed an Advocate Commissioner to visit the suit property and submit a report. Accordingly, on 21.11.2013, the Advocate Commissioner visited the suit site and submitted a report on 27.11.2013. To the said report, he had also annexed a plan. As per the plan, the area marked as A, B, E and F running South to North was shown as an empty passage. Pending the litigation, the defendants sold the property to one Selvam. The *lis pendens* purchaser, on his purchase, put up a super structure on the very pathway shown in the Advocate Commissioner's plan as A, B, E and F.

2. Finding that the situation had been fundamentally altered by the purchaser, the petitioner moved an application seeking for a direction to remove the encroachment made on the pathway. The said application in



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I.A.No.109 of 2014 was dismissed on 01.09.2016. Against which, the present Civil Revision Petition has been presented.

3. When the matter came up for final disposal. I heard M/s. Zeenath Begum for the petitioner and Mr.A.K.Kumarasamy, learned senior counsel for Mr.R.P.Roban Chakaravarthy for the respondent.

4. I pointed out to the learned Senior Counsel that no party can take law into his own hands and alter the situation to the detriment of the other when the matter is seized on by the Court. Mr.A.K.Kumarasamy stated that he will ascertain from his client whether he is willing to restore the property to the position as it was on the date of presentation of the plaint.

5. Today, when the matter is taken up, Mr.Roban Chakaravarthy states that his client has removed the offending tin sheet placed across the pathway. This statement is affirmed by M/s.Zeenath Begum. As the 5th respondent in this revision has restored the property to original situation, no further orders



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are necessary in the application.

6. I have to take notice of the fact that though orders are sought for as against the 5th respondent, who is *lis pendens* purchaser, he had not been impleaded as a party to the suit. He had been impleaded only as a party to the application. A *lis pendens* purchaser is a proper and necessary party to a proceeding which affects his vendor's right. It is not denied by either side that the 5th respondent had purchased the property from the original defendants. Therefore, both sides agreed that the 5th respondent is a proper and necessary party to the suit. Accordingly, the 5th respondent is impleaded as a party to the suit.

7. The plaintiff shall file an amended plaint copy within a period of two weeks from the date of receipt of a copy of this order.

8. In the light of the above, the following orders are passed :-

(1) As the offending structure has been removed, the Civil Revision Petition is closed as no further directions with respect to the structure are necessary.



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(2) The purchaser Mr.Selvam is impleaded as 5th defendant in the suit.

(3) The plaintiff shall file an amended copy impleading Mr.Selvam as a party defendant to the suit within the period of two weeks from the date of receipt of a copy of this order.

(4) Mr.Selvam is granted eight weeks time from the time of filing of amended plaint copy to file his written statement.

9. The suit being of the year 2013, the learned District Munsif, Athur is requested to take up the suit immediately on filing of the written statement and dispose it of within a period of nine months from the date of filing of the written statement by Mr.Selvam.

10. With the above directions, this Civil Revision Petition is disposed of.

No costs.

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Index: Yes/No

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Speaking Order :Yes/No
Neutral Citation:Yes/No
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V.LAKSHMINARAYANAN,J.

nr

To
The District Munsif Court,
Attur.

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