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S.A.No.21 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.21 of 2014
and M.P.No.1 of 2014

1.Mahamuni
2.Thangaraj
3.Dhandapani
4.Sakthi
5.Babu

... Appellants

Vs

Markandan

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgement and Decree passed in A.S.No.45 of 2012 dated 30.07.2013 on the file of the Subordinate Judge at Namakkal in reversing the Judgment and Decree made in O.S.No.9 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Paramathy dated 29.06.2010.

For Appellant ... M/s.MA.P.Thangavel

For Respondents ... Mr.P.Valliappan, Senior Counsel
M/s.SMS.Shri Ramnarayanan for R1



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J U D G M E N T

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Challenging the impugned decree dated 30.07.2013 passed by the Subordinate Judge, Namakkal in A.S.No.45 of 2012, the appellants have filed the present appeal.

2. It is the case of the appellants that the respondent/plaintiff is the absolute owner of the property in Survey No.384/3. There was a dispute with regard to common pathway situated in Survey No.384/4 for which the appellants have already filed a suit in O.S.157/2006 for declaration and mandatory injunction to restrain the respondent from interfering with the peaceful possession of the common pathway situated in Survey No.384/4. The said suit was decreed in favour of the appellants, however, the lower appellate court framed an additional issue and remanded the matter back to the lower court. Aggrieved by such remand, the appeal has been filed. However, the appellants in C.M.A.No.3504 of 2013, which is pending consideration, on instructions would submit that the appellants have no right or title in respect of the property situated in Survey No.384/3 and they will not interfere with the



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peaceful possession of the enjoyment of the property in Survey No.384/3 by the respondents.

3. Learned counsel appearing for the respondent/plaintiff would submit that injunction is granted in respect of the property situated in Survey No.384/3 already by the trial court as well as the lower appellate court with liberty to the appellants to pursue their remedy in respect of the property in Survey No.384/4.

4. In view of the consent expressed by the learned counsel appearing on either side, the Second Appeal stands dismissed confirming the decree only in respect of the property in Survey No.384/3 and further liberty is granted to the appellants to pursue their remedy in respect of the property in Survey No.384/4. There shall be no order as to costs in this Appeal. Consequently, connected miscellaneous petition is closed.

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



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Neutral Citation Case : Yes / No
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To

- 1.The Principal Sub Court,
Nagapattinam
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J

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