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CRP No.4452 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4452 of 2023
and
C.M.P. No. 26876 of 2023

N. Elango

... Petitioner

Versus

N. Manimaran

...Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India,
praying to set aside the order dated 12.09.2023 passed in I.A.No. 3 of 2019 in
O.S.No. 4435 of 2016 on the file of the I Assistant City Civil Court, Chennai.

For Petitioner : Mr. M.Arunkumar

ORDER

The petitioner has filed this revision petition to set aside the order dated
12.09.2023 passed in I.A.No. 3 of 2019 in O.S.No. 4435 of 2016 on the file of
the I Assistant City Civil Court, Chennai.



CRP No.4452 of 2023

2. Heard, Mr. M.Arunkumar, learned counsel for the petitioner and perused the materials available on record.

3. Before the trial Court the defendant has preferred I.A.No.3 of 2019 under Order VII Rule 11 (a) read with Section 151 of CPC, to reject the plaint in O.S.No.4435 of 2016, and the same was objected by the plaintiff stating that there is no cause of action to file a suit and there is a common passage between the properties of both the plaintiff and the defendant. Path way gives a right to use the same as per the settlement deed executed by their mother. Contrary to that, now the defendant has put up a construction. Hence the plaintiff has filed a suit.

4. The learned counsel appearing for the defendant submitted that already there was staircase in the said property, hence there is no need to put up any further construction. In order to demolish the staircase the plaintiff has filed a suit, so there is no cause of action. Further, he already pointed out that the plaintiff sold the property in the year of 2018, after filing of the suit. Hence, there is no locus standi to proceed with the matter. But the learned trial Judge dismissed the said application, stating that admittedly, the property was sold by the plaintiff to one Shanthi and she is in possession of the property, and the



CRP No.4452 of 2023

mother of the plaintiff had executed a settlement deed in the year 2016 and thereafter prayer was also amended with regard to declaration in respect of the said settlement deed. Therefore, the plaintiff has sufficient cause of action to proceed with the matter, accordingly dismissed the application. Aggrieved the same the revision petitioner has preferred this revision.

5. The learned counsel for the revision petitioner submitted that the suit was filed in the year 2016 by the plaintiff / respondent for the relief of permanent injunction. Subsequently, a relief of declaration was added, dispute is with regard to C-Schedule property mentioned as a common passage with a right to ingress and egress. The revision petitioner and the plaintiffs are brothers and as an admitted fact, the plaintiff has now sold the property to one Shanthi but the dispute is with respect of common passage. According to the revision petitioner, already there is a staircase and he has not made any construction as alleged by the plaintiff. With regard to the common passage which is under dispute and the right of the parties can be decided only at the time of trial. Therefore, the reason assigned by the revision petitioner as such is not maintainable. The learned trial Judge has rightly concluded the proceedings, which needs no interference by this Court.



WEB COPY



CRP No.4452 of 2023

T.V.THAMILSELVI, J.

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6. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

13.12.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
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To

1. The I Additional Judge, City Civil Court,
Chennai.
2. The Section Officer,
VR-Section, High Court of Madras.

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