



CRP(MD).No.2094 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No. 2094 of 2021
and
C.M.P(MD).No.1124 of 2021

1.Arumuga Nainar
2.Kasimani

... Petitioners/Plaintiffs

Vs.

1.The Government of Tamil Nadu,
rep., through its District Collector,
Virudhunagar District,
Collectorate Complex, Virudhunagar.

2.The Tahsildar,
Taluk's Office,
Rajapalayam 628 117,
Virudhunagar District.

3.The Block Development Officer,
Rajapalayam Union Office,
Tenkasi Road, Rajapalayam,
Virudhunagar District.

... Respondents/Respondents

PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to set aside the docket order dated 25.11.2021 in unnumbered O.S.No.... of 2021 (Diary No.2931) on the file of the learned District Munsif, Rajapalayam.

(Cause-title amended vide Court order dated 01.02.2022 made in C.M.P(MD).No.259 of 2022 in CRP(MD).No.2094 of 2021)



CRP(MD).No.2094 of 2021

For Petitioners : Mr.M.Ashok Kumar

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ORDER

The present revision petition has been filed by the plaintiffs challenging an order passed by the trial Court refusing to number the suit on the ground it is not maintainable in view of the orders passed by the High Court in W.P(MD).No.6324 of 2021 and the notice issued by the Block Development Officer, Rajapalayam, on 21.09.2021.

2. One Shamugeswari had filed W.P(MD).No.6324 of 2021 before this Court contending that the present plaintiffs have encroached upon a common pathway in Survey No.75/15H and Survey No.77/8 and sought a direction to the revenue officials for removal of the said encroachment based upon her representation. The Hon'ble Division Bench of this Court was pleased to pass an order directing the revenue officials to conduct an enquiry after giving due opportunity to the plaintiffs and the said Shanmugeswari. A perusal of the order of this Court indicates that there is no finding that it is a common pathway or there is any positive direction for removal of encroachment in the alleged common pathway.



CRP(MD).No.2094 of 2021

3. Notice has been issued by the Block Development Officer, Rajapalayam, on 21.09.2021, directing for removal of encroachment. However, it is the specific case of the plaintiffs that the Survey No.77/8 is their private property and therefore, this issue cannot be adjudicated by the revenue authorities.

4. In view of the aforesaid facts, there is no bar for the Civil Court to entertain the said suit. Hence, the learned District Munsif, Rajapalayam, is directed to number the suit and dispose of the same on merits and in accordance with law.

5. With the above observation, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

6. Registry to return the original plaint to the learned counsel for the revision petitioners.

02.03.2023

Index : Yes / No
Internet : Yes / No
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CRP(MD).No.2094 of 2021

R.VIJAYAKUMAR ,J.,

Rmk

To
The District Munsif, Rajapalayam.

Order made in
CRP(MD).No.2094 of 2021

Dated:
02.03.2023