



C.R.P.No.218 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.218 of 2023
and CMP.No.1795 of 2023

1.K.Dhanuja
2.V.Chitradevi
3.P.Latha
4.K.Jayalakshmi

... Petitioners

Vs

1.C.Sitheshwaran
2.L.S.Sathishkumar
3.B.Kumaran

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order passed by the trial Court dated 18.07.2022 in I.A.No.1/2022 in O.S.No.4/2022 on the file of the District Munsif Court at Perundurai.

For Petitioners : Mr.Muthu Ganesa Pandiyan

For Respondents : Mr.C.Ramaraj for R1



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ORDER

The civil revision petitioners are the defendants 1 to 4 in O.S.No.4 of 2022. The first respondent/plaintiff has presented the suit for the following reliefs :

- (a) Granting a mandatory injunction directing the defendants to remove all the encroachments made in the suit 'A' schedule property (common cart track) and restore and same, and if the defendants fail to restore it within a time frame as prescribed by this Honourable Court, permit the plaintiff to do the same at his expenses and reimburse the same from the defendants.
- (b) Granting a permanent injunction restraining the defendants, their men, agent or successors from obliterating or encroaching upon suit 'A' schedule property (common cart track) in any manner and thereby interfere with the plaintiffs' common right to use the same in any manner;
- (c) Granting a mandatory injunction directing the defendants to remove all the encroachments made in the suit 'B' schedule property (common thadam) and restore the same and if the defendants fail to restore it within a time frame as prescribed by this Honourable Court, permit the plaintiff to do the same at his expenses and reimburse the same from the defendants.
- (d) Granting a permanent injunction restraining the defendants, their



men, agent or successors from obliterating or encroaching upon suit 'B' schedule property (common thadam) in any manner and thereby interfere with the plaintiffs' common right to use the same in any manner.

- (e) Declaring that the sale deed dated 27.10.2021 registered as Document No.7631/2021 before SRO, Avalpoondurai executed by the defendants 1 to 4 in favour of the defendants 5 & 6 in respect of the suit 'C' schedule property (common cart track) is neither valid nor binding on the plaintiff.
- (f) Granting a permanent injunction restraining the defendants, their men, agent or successors from draining the rain and sewage water into the suit 'C' schedule property (common thadam) in any manner and thereby interfere with the plaintiffs' common right to use the same in any manner.
- (g) Directing the defendants to pay the cost of the suit to the plaintiff.

2. The entire case revolves around three pathways demarcated as 'ABCD', 'EGLKJF' and 'EFJG'. According to the plaintiff, the defendants have obstructed the aforesaid pathways by encroaching upon the same. In order to show the existence of encroachments and in order to find out a lie of the pathways, the plaintiff took out an application in I.A.No.1 of 2022. The said application was allowed vide order dated 18.07.2022, against which, the



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present civil revision is filed by the defendants 1 to 4.

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3. Heard Mr.Muthu Ganesa Pandiyan, learned counsel for the revision petitioners and Mr. C.Ramaraj, learned counsel for the first respondent.

4. The learned counsel for the petitioners would vehemently contend that the order is an unreasoned laconic and does not disclose any application of mind, therefore, he pleads for setting aside the same.

5. I will have to agree with him that the order is unreasoned, but, if I were to set aside the impugned order on that ground, it will only pave way for further litigation; that yet another application might be filed, which again will have to be heard and orders would be passed by the learned Trial Judge. It might result in the unsuccessful party yet again bring forth a revision before this Court. In such an eventuality, the parties will be stuck in quagmire of never ending revisions, with the Court being kept away from the meat of the matter.



6. I went through the averments in the pleadings. The specific plea of the plaintiff is that the defendants have encroached upon the common pathway which has been described in the plaint as stated above. In matters such as these, as opined by the Supreme Court in ***Haryana Waqf Board Vs Shanti Sarup and others, (2018) 8 SCC 671***, an appointment of advocate commissioner is sine-qua-none. Further, in a matter relating to common pathway, it would always been profitable for the Court to get a report of the Advocate Commissioner, as he would be the eyes and ears of the Court. If a report is positive in nature i.e., in favour of the plaintiff, then the defendant / defendants, as the case may be, would have to prove that there is no encroachment over the same. And this, he/she/they can always demonstrate through the report of the Advocate Commissioner, either by filing petitions or by cross-examining the Commissioner as is contemplated under Order XXVI Rule 10(2) of CPC. If the Advocate Commissioner were to file a report that there is no pathway, then the burden would shift to the plaintiff to demonstrate that there existed a pathway, and there are encroachments over the same. Looking at it on either side, if the Advocate Commissioner were to visit the property, it would be helpful to the Court to elucidate the matter in issue. Therefore, the order appointing the Advocate Commissioner is not



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being interfered, not for the reasons given by the learned Trial Judge, but for the reasons set forth in this order.

7. In the result, the civil revision petition is dismissed with a direction to the learned District Munsif, Perundurai to get a report of the Advocate Commissioner in this matter at the earliest, in any event, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

03.06.2024

Index:Yes/No

Internet : Yes / No

Speaking order / Non-speaking orders

To:

1.The District Munsif
Perundurai.

2.The Section Officer
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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