



C.R.P.No.1029 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No. 1029 of 2024

and

C.M.P. No.5381 of 2024

1. Nizar S/o. Thoulath Sahib
2. Munavar S/o. Rahman

... Petitioners

vs.

1. Ravivarma S/o. Kaliapa Gounder
2. Jayakodi W/o. Ravivarma
3. Nizam (Exonerated)
4. Shayerabegam @ Shaberabegum W/o. Late Malick
5. Nawab John S/o. Munab Salib
6. Malick S/o. Ghows Sahib

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Code of Civil Procedure, praying to set aside the fair and decreetal order dated 09.11.2023 in C.M.A. No.2 of 2022 on the file of learned Subordinate Court, Tirupattur, Vellore District against I.A. No.1 of 2021 in O.S. No.162 of 2021 on the file of learned Additional District Munsif Court, Tirupattur, Vellore District dated 23.04.2022.



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For Petitioners : Mr. K. Venkateshwaran

For Respondents : Ms. S. Sridevi [for R1 & R2]

ORDER

The Civil Revision Petition is filed challenging the order passed by the Sub Court, Tirupathur dismissing the appeal filed by the petitioners challenging the temporary injunction granted by the Trial Court.

2. The respondents 1 and 2 filed a Suit against the petitioners and other respondents in O.S. No.162 of 2021 seeking declaration that the respondents 1 and 2 are entitled to easementary right to use common pathway described in Suit as Item No.2 and for permanent injunction restraining the petitioners and other respondents from interfering with the alleged right of user. Pending suit, the respondents 1 and 2 filed an application for temporary injunction in I.A. No.1 of 2021. The Trial Court granted temporary injunction as prayed for and aggrieved by the same, the petitioner preferred an appeal in C.M.A. No.2 of 2022 and the same was



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dismissed by the First Appellate Court. Aggrieved by the same, the revision petitioners are before this Court.

3. It is seen from the typed set of papers that the respondents 1 and 2 are purchasers of the Suit Item No.I from the sharers of the petitioners and other respondents. There was a partition between the petitioners and their siblings in the year 1979 and the said Partition Deed dated 16.07.1979 was marked as Ex.P.1. The common pathway described in Item No.II of the plaint was found place in Ex.P.1. The respondents 1 and 2 / plaintiffs are claiming right under the sharers of the petitioners and the sale deeds in favour of the respondents are marked as Ex.P.2 to Ex.P.5. Therefore all the easementary rights available to the petitioners and their siblings are also available to the purchasers from sharers of the petitioners. Based on Ex.A1 to Ex.A.5 and also the Advocate Commissioner's report, the Trial Court came to the conclusion that the respondents 1 and 2 had made out a prima facie case regarding their right of user over the common pathway described as Item No.II and granted interim injunction. The said factual finding was confirmed



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by the First Appellate Court. The factual findings rendered by the Court below are based on evidence available on record namely Ex.P1 to Ex.P5 and Advocate Commissioner's report Ex.P.6. It is also seen from the records that the Trial Court granted temporary injunction by allowing the applications filed by the respondents 1 and 2 on 23.04.2022 and the said order has been in operation for the past two years. In the absence of any perversity in the factual conclusion reached by the Courts below, I do not find anything to interfere with the said findings.

4. Accordingly, this Civil Revision Petition stands dismissed. However, taking into consideration the Suit is of the year 2021, this Court is inclined to direct the Trial Court to dispose of the Suit as expeditiously as possible.

20.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
mjs

To

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1. The Subordinate Judge, Tirupattur, Vellore District.
2. The Additional District Munsif, Tirupattur, Vellore District.

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S.SOUNTHAR, J.

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