



CRP No.5060 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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1.Shori Rao
2.Gnanasekara Rao
3.Sairam
4.Suresh

... Petitioners

Vs.

1.Saravanan
2.Govindasamy

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 07.01.2022 in IA No.682 of 2019 in OS No.79 of 2019 on the file of District Munsif Court, Dharmapuri.

For Petitioner : Mr.V.Sakkarapani

ORDER



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The Civil Revision Petition is filed to set aside the fair and decreetal order dated 07.01.2022 in IA No.682 of 2019 in OS No.79 of 2019 on the file of District Munsif Court, Dharmapuri.

2. The petitioners are the defendants and the respondents are the plaintiffs in OS No.79 of 2019 on the file of the District Munsif, Dharmapuri. The respondents/plaintiffs filed the suit for declaration and permanent injunction against the petitioners/defendants 1 to 4. The A Schedule property belongs to the second respondent/second plaintiff and his wife. However, wife of the second plaintiff is not a party to the suit. The fourth defendant has filed an application in IA No.682 of 2019 to reject the plaint on the ground that the plaintiffs are not owners of the A Schedule property for which they claim pathway over the B Schedule property besides claiming injunction for using of B Schedule property by the petitioners. The respondents cannot claim declaration of right over B Schedule property. On that ground, the suit is not maintainable. Further the consequential relief of



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injunction is not maintainable. Further, the extent of B Schedule property is not mentioned in the plaint schedule. On that ground also, the plaint has to be rejected. The trial court has failed to consider this fact and dismissed the said application on 07.01.2022. Challenging the said order, the petitioners have filed the present civil revision petition.

3. Learned counsel for the petitioners submits that the trial court without considering the grounds raised by the petitioners has dismissed the application. Hence, the order of the trial court is liable to be set aside.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. The facts reveal that the petitioners are the defendants and the respondents are the plaintiffs in OS No.79 of 2019 on the file of the District Munsif, Dharmapuri. The respondents/plaintiffs filed the suit for declaration and permanent injunction against the defendants 1 to 4. The fourth



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defendant has filed an application in IA No.682 of 2019 to reject the plaint on the ground that the plaintiffs are not owners of the A Schedule property for which they claim pathway over the B Schedule property besides claiming injunction for using of B Schedule property by the petitioners. Further, in the absence of any mention about the extent of B Schedule property, declaration was sought for by the respondents and therefore on this ground also the plaint is liable to be rejected. This objection is not a valid ground for rejection of plaint. The plaintiffs have filed the suit for declaration of their pathway right over B Schedule property for using the A Schedule property. So, whether they are having right over the B Schedule property, and if so to what extent they are having right to use the B Schedule property has to be adjudicated after letting evidence. Therefore, it cannot be straight away found that the plaintiffs have no cause of action and reject the plaint. Therefore, the trial court has rightly dismissed the application filed by the petitioners/defendants for rejection of plaint. I find no infirmity in the order dated 07.01.2022 passed by the trial court and there are no merits in the civil revision petition.



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6. In fine, the civil revision petition stands dismissed. The Trial Court is directed to dispose the suit as early as possible. There will be no order as to costs. Consequently, CMP No.29420 of 2023 is closed.

08.01.2024

Index: Yes/No
Internet: Yes/No
mrn

To
The District Munsif Court, Dharmapuri



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V.SIVAGNANAM, J.

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