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C.R.P.(PD).No.3072 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.3072 of 2021
and CMP.Nos. 21655 and 21657 of 2021

J.Malini

... Petitioner

vs.

1.J.Anandan

2.A.Hema

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair order and decreetal order dated 09.09.2021 passed by the V Additional City Civil Court, Madras, dismissing CMA.No.63 of 2018 confirming the fair order and decreetal order passed by the XV Assistant City Civil Court, Madras, dismissing I.A.No.5064 of 2018 in O.S.No.1903 of 2018 and allow I.A.No.5064 of 2018 in O.S.No.1903 of 2018 pending on the file of the XV Assistant City Civil Court, Madras.



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For Petitioner : Mr.B.Hari Krishnan

For Respondents :Mr.N.Senthil Kumar
for R1 and R2

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the appeal filed by the revision petitioner, challenging the dismissal of petition filed by him seeking temporary injunction pending suit.

2. The petitioner herein filed a suit for injunction against her brother restraining him from any manner blocking or preventing the petitioner right to access through 3 ft common pathway in Schedule 'B' of the plaint by using it as a kitchen.

3. The petitioner also filed an Interlocutory Application in I.A.No.5064 of 2018 seeking temporary injunction restraining the respondent from blocking or obstructing the petitioner's ingress and egress through the 3ft common passage, situated at southern side Vinayagar Koil Street by having kitchen thereon or in any other manner. The trial Court after taking into



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consideration the documents filed by both the parties came to the conclusion that the permanent structures in the suit property appeared to have been constructed even prior to filing of the suit and therefore, interim injunction prayed for by the petitioner could not be granted and dismissed the interlocutory application.

4. Aggrieved by the same, the petitioner preferred an appeal in C.M.A. No.63 of 2018. The First Appellate Court also concurred with the findings of the trial Court and aggrieved by the same, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner submitted that the respondents are attempting to interfere with ingress and egress of the petitioner through the common passage and therefore, if the respondents are not enjoined from interfering with his right of way to the common passage the petitioner would be put to great loss and hardship. The learned counsel for the petitioner further submitted that even if there are construction with the suit property, the respondents are not entitled to take advantage of the illegally put up structure.



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6. The learned counsel appearing for the respondents submitted that there is a permanent structure in the suit property and the petitioner also filed an application to demolish the permanent structure by way of filing a petition seeking mandatory injunction to remove the permanent structure available in the suit property in I.A.No.5064 of 2018 and the same was dismissed and the said order has become final as the same was not challenged by the petitioner by way of filing petition. The learned counsel further submitted that the trial in the suit is already commenced and the matter is posted for cross examination of DW.1 and therefore, at this stage the orders passed by the Court below need not be interfered. Both the Courts below concurrently found there are permanent structures in the suit property and therefore, the interim injunction prayed for by the petitioner could not be granted. It was also noted by the Courts below that the dark patches of smoke available in the structures would reveal that the kitchen in the suit property had been in existence for several years.



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7. It is also brought to the notice of the Court, the trial has

already commenced and the matter is posted for cross examination of DW.1 on 11.01.2024. In view of the fact, the suit is in advanced trial stage, this Court is not inclined to interfere with the concurrent findings rendered by the Court below, refusing the temporary injunction. However, the Court below is directed to dispose of the main suit as expeditiously as possible.

8. Accordingly, this Civil Revision Petition is disposed of with above direction. No costs. Consequently, the connected miscellaneous petition is closed.

10.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.SOUNTHAR, J.

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To

The XV Assistant City Civil Court, Madras.

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10.01.2024

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