



C.R.P. No.3798 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3798 of 2023
and
C.M.P. No. 23584 of 2023

1. M.P.Mohandass
2. M.Kamalakannan

... Petitioners

versus

M/s. Gazy Mag Private Ltd.,
rep. by its Managing Director/
Authorised Signatory
Mr.S.Prabhu Kumar

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the judgment and decree dated 29.08.2023 passed by the XV Addl. Judge, City Civil Court, Chennai in C.M.A.No. 38 of 2023 by reversing the fair and decreetal order made in I.A.No.3 of 2023 in O.S.No.3299 of 2023 on the file of III Asst. City Civil Court, Chennai dated 08.06.2023.



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For Petitioners : Mr.R.Sankarasubbu

For Respondent : Mr.V.Raghavachari,
Senior Advocat for
Mr.R.Jayaprakash

ORDER

Challenging the impugned judgment and decree passed in C.M.A.No.38 of 2023 by the XV Addl. Judge, City Civil Court, Chennai by reversing the fair and decreetal order made in I.A.No.3 of 2023 in O.S.No.3299 of 2023 on the file of III Asst. City Civil Court, Chennai, the Revision Petitioners have filed this Civil Revision Petition.

2. Heard and considered rival submissions of learned counsel for revision petitioners and respondent and perused the materials available on record.

3. The respondent/plaintiff filed a suit for permanent injunction against the petitioners/defendants and also filed an application in I.A.No.3 of 2023 for interim injunction restraining the respondent from interfering with appellants' peaceful possession and enjoyment of the suit properties and also obtained the interim order. Based on that, 30 ft. road belongs to Corporation



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of Chennai was closed by putting up huge gate without any access to the revision petitioners to enter into their property. On receipt of notice, the revision petitioners have raised objections and on considering the same, the trial judge dismissed the said application. Against which, the respondent/plaintiff filed an appeal in C.M.A.No. 38 of 2023 and the same was allowed by the appellate judge without appreciating the facts and circumstances properly. In fact, 'A' schedule property was not under the enjoyment of the respondent/plaintiff or their vendor. However, their forefathers have enjoyed the building measuring an extent of 1 ground 1676 sq.ft. in Survey No.2/5, Block No.22, Town Survey No.2/1, Urur Village, Plot No.10 Part (Layout No. 11/1986) 2nd street, Parameswari Nagar for more than 100 years. In fact, the entire 49 grounds was purchased by Sakthivel Investments by its partners viz., Umayal Achi and 2 others in the year of 1963. They have also filed number of litigation including against father of revision petitioners in O.S.No.914 of 1965, but the said suit was dismissed in the year of 1967. Thereafter, a compromise was entered. Accordingly, the revision petitioners' father paid entire amount to the said Investments and enjoyed the property without any hindrance. Thereafter, a



settlement deed was executed in favour of revision petitioners and based on that, now the revision petitioners are enjoying the property.

4. The learned counsel for revision petitioners would submit that based on the sale deed executed on 19.04.2022, the respondent/plaintiff claiming 30 ft. Corporation of Chennai road including their property, but the road is maintained by Corporation of Chennai. However, it was declared as a public road by this court in W.P.No.6486 of 2010 and the same was confirmed by the Apex Court in S.L.A.No. 16864 of 2012. Accordingly, till date, it was maintained by the Corporation of Chennai by maintaining the street lights in the said road and the ownership of plaintiff was under challenge before the District Registrar. But, without considering all these legal implications, the XV Addl. Judge, City Civil Court, Chennai erroneously granted interim order in favour of respondent/plaintiff, as such is illegal and the same is liable to be set aside.

5. By way of reply, the learned counsel for respondent/plaintiff would submit that the plaintiff company is the owner of 34.74 grounds situated at Parameswari Nagar, Adyar and the suit property was purchased from Umayal Achi and 2 others through a sale deed dated 19.04.2022. He would



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submit that the revenue records also stand in the name of vendor also attempted to transfer in favour of petitioners' company. But, the revision petitioners are not in possession of the suit property, in fact, they are taking steps to develop the residential apartments. However, the respondent/plaintiff, who being an advocate, obstructed the revision petitioners' company staff and also threatened them that they will erect tinshed for advocate office and attempted to dispossess the revision petitioners from the suit property. Therefore, they have approached the court and though the trial court not granted interim order, the appellate court rightly analysed the facts and circumstances and granted the order holding that possession follows title as the ownership of property stands in the name of respondent/plaintiff. As a lawful owner, possession is to be protected and if any order is granted, they would be put into much hardship, besides the respondent not produced any single document to establish that it is a public road. Therefore, the C.M.A. was rightly allowed, which needs no interference. Hence, he prayed to dismiss this Civil Revision Petition as no merit.



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6. Considering both side submissions, it reveals that the respondent/plaintiff claiming right and title over the property based on the purchase made through a sale deed in the year of 2022 from Sakthivel Investments, but the revision petitioners/defendants also claiming right over the property stating that their father paid the amount to Sakthivel Investments long back and they have produced the title deed and also enjoyed the property for more than 100 years. In the suit schedule of property, there is a description of 'C' schedule property with an extent of 34.74 grounds. But, after the purchase, now the respondent/plaintiff taking steps to transfer the name to their company's name. Furthermore, according to revision petitioners/defendants, on 30.04.2023, the respondent/plaintiff and his henchmen through JCB attempted to encroach 30 ft. Corporation of Chennai road as they are owner of property. Immediately, all the residents have objected, however 30 ft. Corporation of Chennai road was damaged and acquired the road under their control. Though the complaint was given, the police authority has not taken any steps immediately. To support their contentions, the learned counsel for revision petitioners/defendants would submit that already the said road viz., Second Street, Parameswari Nagar,



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Adayar, Chennai was declared as a public road by this court in W.P.No.6846 of 2010 and the same was upheld by the Supreme Court.

7. Furthermore, the proceedings was issued by the Asst. Commissioner/Zone X i/c. of Corporation of Chennai dated 23.10.2000, which reads as follows:-

“As per the delegation of powers under Sec.218 and 219 of C.C.M.C. Act vide Council Resolution No.80/96, dt. 10.01.1996, I, the Assistant Commissioner, Zone X i/c, hereby declare that Parameswari Nagar 2nd Street, Ward 151, Unit 30(A), Zone X as a Public Street as per the sketch attached herewith.

I, the Asst. Commissioner, Zone X i/c., Corporation of Chennai hereby take over and declare Parameswari Nagar 2nd street, Ward 151 as Public Road under Section 219 of C.C.M.C. Act with immediate effect.”

A copy of sketch was also annexed with the said proceedings in respect of showing Parameswari Nagar Second Street, which is annexed in the typed set of papers at Page No.103. So, as per the proceedings of Assistant Commissioner of Chennai, there is Parameswari Nagar Second Street, Ward



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No.151, Unit 30(A) declared as a public street, but the contention of respondent/plaintiff is that there is no such declaration in existence and entire property belongs to them. Moreover, the Commissioner was already directed by this court in the writ proceedings to lay the road and also to remove the illegal encroachment in the road and directed to install the street lights within a period of four weeks. Since the said street is a public road, the same was confirmed by the Division Bench of this Court in Contempt Proceedings in Cont. P. No.1452 of 2010. Therefore, prima facie, the revision petitioners/defendants established that the Parameswari Nagar Second Street is a public road, but in the entire suit property including Parameswari Nagar Second Street as mentioned in 'C' schedule, thereby respondent/plaintiff claiming absolute right over the property through the said sale deed, thereby 30 ft. public road belong to Corporation of Chennai, through which the revision petitioners claimed access to their property. If the respondent/plaintiff grabs the property, the revision petitioners would be put into much hardship. But, there is no description about the order passed by this court as well as the proceedings issued by the Asst. Commissioner, Corporation of Chennai. The appellate court has granted an interim order



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restraining the revision petitioners from interfering with the respondent and if they are in possession and enjoyment of the property, as such is illegal and the same is liable to be set aside. The existence of road as well as usage of road has to be decided at the time of trial. If the public road, is included in the suit property by the respondent/plaintiff, then the public will be put into much hardship. Therefore, the order passed by the appellate court in C.M.A.No.38 of 2023 is set aside confirming the findings of the trial court in I.A.No.3 of 2023 in O.S.No.3299 of 2023. Accordingly, this Civil Revision Petition is allowed. Liberty is granted to both parties to put forth their defence before the trial court. No costs. Consequently, the connected Civil Miscellaneous Petition stands closed.

12.06.2024

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To
XV Addl. Judge,
City Civil Court, Chennai.

T.V.THAMILSELVI, J.



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