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C.R.P.(PD)No.4735 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4735 of 2024 and
C.M.P.No.26462 of 2024

1.Venkatachalam
2.V.Nagammal
3. Bakkiyammal

....

Petitioners

..Vs..

1.Appichigounder
2.Tamilselvi
3.Malathi
4.Gunasundari
5.Saraswathi

....

Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in C.M.A.No.5 of 2018 on the file of the Sub-Court, Bhavani, dated 27.06.2024 confirming the fair and final order passed in I.A.No.1853 of 2018 in O.S.No.473 of 2018 on the file of Principal District Munsif Court, Bhavani, dated 27.11.2018.



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For Petitioner : Mr.B.Gopalakrishnan

ORDER

This Civil Revision Petition arises against the order passed by the learned Subordinate Judge at Bhavani in C.M.A.No.5 of 2018 dated 27.06.2024 in confirming the order and the decretal order of the learned Principal District Munsif at Bhavani in I.A.No.1853 of 2018 in O.S.No.473 of 2018 dated 27.11.2018.

2. O.S.No.473 of 2018 is a suit for declaration that the plaintiffs are entitled to use the pathway denominated as C,D,E,F, in the suit plan by virtue of easement of necessity for relief of permanent injunction restraining the defendants from interfering with the plaintiffs usage of the aforesaid pathway and for consequential orders.

3. It is the case of the plaintiffs that C,D,E,F, pathway is common pathway and that the defendants are attempting to interfere with the right of the plaintiffs over the same. Along with the suit, they filed an application seeking for interim injunction in I.A.No.1853 of 2018. They



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sought for an order restraining the defendants from interfering with the plaintiffs usage of the pathway pending disposal of the suit.

4. The defendants were served with notice. They/defendants entered appearance and pleaded that the pathway is an exclusive pathway of the defendants and the plaintiff does not have any right to use the same. It was also denied that it was a common pathway.

5. Before the learned trial Judge, the plaintiffs marked Ex.P1 to P14 and defendants marked Exs.A1 to A6. Pending the application, an Advocate Commissioner appointed. He also submitted a report together with a plan. The report and plan were marked as Exs.C1 and C2 in the Interlocutory Application.

6. After hearing both sides, the learned Principal District Munsif came to the conclusion that as the report reveals the existence of the pathway, both parties were directed to maintain *status-quo*. This order was passed on 27.11.2018.

7. Aggrieved by the said order, the civil revision petitioners



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preferred C.M.A.No.5 of 2018. The learned Subordinate Judge at Bhavani dismissed the Appeal on 27.06.2024. Hence, this revision.

8. I heard Mr.Gopalakrishnan for the civil revision petitioners.

9. Mr.Gopalakrishnan urged that the relief sought for in the application as well as the relief sought for in the suit are one and the same and therefore the Court ought not to have granted the relief. In addition, he pleads that the pathway is a private pathway of the defendants and that the plaintiffs, by virtue of the suit, are trying to create a new right over the property. Hence, he seeks for revision of the impugned order.

10. I have carefully considered the submissions of Mr.Gopalakrishnan and gone through the records.

11. On the first plea that the relief in the suit and the Interlocutory application are one and the same, I am not with Mr.Gopalakrishnan. The suit is one for declaration with consequential relief of injunction. The order of the learned Trial Judge, as confirmed by the Appellate



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Court, has not declared that the pathway as a common pathway. All that they have done is to give a direction to both the parties to maintain *status-quo* viz-a-viz the C,D,E,F, pathway. In case the suit is dismissed on the ground that the pathway is a private pathway belonging to the defendants, then the plaintiffs are not going to have a right over the same. On the contrary, if the suit were to be decreed and the defendants were to interfere with the pathway, then the plaintiffs would be seriously prejudiced on account of the fact that they are not in a position to use the pathway pending disposal of the suit.

12. Balancing both interests, the learned Trial Judge has only granted an order of *status quo*. *Status quo* implies that the suit schedule mentioned property should be maintained as it stands on the date of presentation of the plaint. This means whether the pathway is a public pathway or a private pathway will be decided at a later date until such a decision is taken, the pathway should remain as it is. This neither prejudices the defendants nor does it create a right to the plaintiffs.

13. In so far as the 2nd plea is concerned, it is always open to Mr.Gopalakrishnan's client to let in evidence before the Court to



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substantiate their plea that the pathway is a exclusive pathway of the defendants. Neither the Trial Court nor the Lower Appellate Court, as pointed out above, has granted a declaration that the pathway is a common pathway.

14. Apart from the above, I am dealing with a revision challenging an Interlocutory Order, The final Court of facts is the Lower Appellate Court. It has appreciated the evidence and has come to a conclusion that order of *status quo* granted by the Trial Court should be continued. Unless and until the order is perverse or contrary to the settled position of law, it should be not to be interfered with in a revision.

15. In the light of the above, I do not find any merits in the revision, This civil revision petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
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To

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- 1.The Principal District Court,
Bhavani.
- 2._The Subordinate Court,
Bhavani



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V. LAKSHMINARAYANAN,J.

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