



C.R.P(MD) No.496 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD) No.496 of 2021
and CMP(MD)No.2663 of 2021

1. Jeyakumar

2. Muthuraman

3. Rajapandi

... Petitioners

Vs

Virumandi

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records pertaining to the order, dated 17.12.2019 passed in Civil Miscellaneous Appeal in C.M.A.No.7 of 2019 on the file of the Sub Judge, Usilampatti confirming the order passed in I.A.No.401 of 2017 in O.S.No.108 of 2017 on the file on the District Munsif cum Judicial Magistrate No.1, Usilampatti, and set aside the same.

For Petitioners : Mr. S. Rajasekar
for Ms/.T.Lajapathy Roy Associates

For Respondent : Mr.J.Barathan



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ORDER

This Civil Revision Petition has been filed, assailing the order passed by the learned Subordinate Judge, Usilampatti in C.M.A. No. 7 of 2009, dated 17.12.2019, confirming the order passed in I.A. No. 401 of 2017 in OS No. 108 of 2017 on the file of the learned District Munsif cum Judicial Magistrate No. 1, Usilampatti.

2.For the sake of convenience the parties herein are referred to as arrayed in the original suit.

3.The suit property consists of three items of property and the same originally belonged to the defendants. Subsequently, the plaintiff purchased the 'A' and 'B' scheduled properties from the defendants through a registered sale deed, dated 06.10.2005. While so, the 'C' scheduled property namely East-West pathway having length of 207 feet and breadth of 10 feet was left for the common usage of the plaintiff and the defendants. The said 'C' scheduled pathway had been in existence on the northern side of the 'B' scheduled property. Ever since the date of sale, the suit 'A' and 'B' scheduled properties have been in peaceful possession and



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enjoyment of the plaintiff. The plaintiff has already put up a door way towards the 'C' scheduled pathway. Accordingly, the plaintiff had been in possession and enjoyment over the 'A' and 'B' scheduled properties by using the 'C' scheduled property as common pathway. The Sale deed executed by the defendants makes it clear that they left the 'C' scheduled property as East- West passage for the common passage of the plaintiff and the defendants. In the meanwhile, the defendants asked for huge money from the plaintiff for permitting him to use the 'C' scheduled pathway. However, the plaintiff had refused to pay the money. Pursuant to the same, the defendants attempted to block the access of the plaintiff over the 'C' scheduled property by fencing the entrance of the 'C' scheduled property.

4. Therefore, the plaintiff has filed a suit in O.S No. 108 of 2017 along with I.A. No. 401 of 2017, a petition seeking temporary injunction. Relying upon the report of the Advocate Commissioner, the learned trial Court proceeded to observe that the defendants having left the 'C' scheduled property as common passage by mentioning the same specifically in the sale deed, marked as exhibit Ex.P1, prima facie case and balance of convenience is in favor of the plaintiff. Observing that if the defendants are permitted to fence the 'C' scheduled property, it would



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cause irreparable loss to the plaintiff and I.A. No. 401 of 2017 was allowed by granting temporary injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the 'A' and 'B' scheduled properties through 'C' scheduled property till the disposal of the suit. Assailing the same, the defendants as appellants had preferred C.M.A. No. 7 of 2019 before the Subordinate Court at Usilampatti.

5.The learned Subordinate Judge considering the certified copy of the Advocate Commissioner's report, which was filed as Ex.R.6 in the said CMA, wherein, the existence of a 10 feet pathway has been specifically mentioned/reported and considering the fact that the defendants have never denied the fact that the pathway was shown as the northern side boundary of the property purchased by the plaintiff, proceeded to conclude that the question as to whether the said 'C' scheduled pathway can be used by the plaintiff or it is an exclusive property of the defendants can only be decided in trial, based upon oral and documentary evidence. That apart, the learned Subordinate Judge further observed that the plaintiff had established that the 'C' scheduled property is in existence and therefore, he has got a prima facie right to use the



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pathway. Thereafter, the learned Subordinate Judge proceeded to conclude that the order assailed is only an order of temporary injunction. Hence, the defendants have to face the trial to prove their objections. Therefore, the learned Subordinate Judge concluded that the trial Court has rightly appraised the facts and has granted an order of temporary injunction, thereby, dismissing the Civil Miscellaneous Appeal.

6.This Court is of the considered opinion that both the trial Court as well as the Subordinate Court, Usilampatti having been fully convinced that the balance of convenience has been established by the plaintiff has proceeded to pass an order of temporary injunction. Fully concurring with the observation of the learned Subordinate Judge that whether the said 'C' scheduled pathway can be used by the plaintiff or the same is the exclusive property of the defendants can only be decided in the trial, based upon oral and documentary evidence, without commenting upon the merits of the issue in hand, this Court hereby refrain from interfering with the order passed by the learned Subordinate Judge, Usilampatti in C.M.A. No. 7 of 2019, dated 17.12.2019.



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7.However, this Court hereby direct the learned District Munsif cum Judicial Magistrate No. 1, Usilampatti to dispose of the case in O.S No. 108 of 2017 as expeditiously as possible, within a period of 6 months from the date of receipt of copy of this order.

8.Accordingly the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

Index :Yes/No
Internet:Yes/No
PNM

To

1.The Subordinate Judge, Usilampatti.

2.The District Munsif cum Judicial Magistrate No. 1, Usilampatti

3.The Record Keeper,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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