



CRP(MD).No.691 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

**C.R.P(MD)No.691 of 2022
and C.M.P(MD).No.2863 of 2022**

1.Ramasamy
2.Subbaiyan

... Petitioners

-Vs-

1.Muthusamy
S/o.Bommaian
2.M.Muthusamy
S/o.Masiya Gowder

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in C.M.A.No.6 of 2019 dated 06.08.2021 on the file of the Additional Subordinate Court, Dindigul, confirming the fair and decreetal order passed in I.A.No.695 of 2018 in O.S.No.172 of 2018 dated 29.10.2018 on the file of the Additional District Munsif Court, Dindigul.

For Petitioners : Mr.B.Azhagesh
For Respondents : Mr.M.P.Senthil



CRP(MD).No.691 of 2022

WEB COPY

ORDER

The civil revision petition arises against the order dated 06.08.2021 in C.M.A.No.6 of 2019 passed by the learned Additional Subordinate Judge, Dindigul, confirming the fair and decreetal order passed in I.A.No. 695 of 2018 in O.S.No.172 of 2018 dated 29.10.2018.

2. Heard Mr.B.Azhagesh, learned counsel appearing on behalf of the petitioners and Mr.M.P.Senthil, learned counsel appearing on behalf of the respondents.

3. It can be seen that the suit is filed on 27.04.2018 with the prayer to declare that items 1, 3 and 4 of the suit properties belongs to the first plaintiff absolutely and declare that item 2 of the suit properties belongs to the second plaintiff absolutely and consequentially granting a permanent injunction and mandatory injunction and for other relief. Along with the suit, application for interim injunction restraining the defendants from in any manner interfering with the possession and enjoyment of the plaintiffs was also filed. The said application for injunction was resisted by the defendants. The trial Court considered the case of the parties and by an



CRP(MD).No.691 of 2022

WEB COPY

order dated 29.10.2018 granted an order of injunction and the same is confirmed in the appeal on 06.08.2021, as against which, this civil revision petition is filed.

4. The learned counsel for the petitioners would submit that in this case the injunction is granted against the co-owner. No injunction would lie against the co-owner. Secondly, he would submit that in respect of item 2 of the property, the defendants have also purchased the same and therefore, the grant of injunction as against the true owner is also incorrect in law and both the Court below fell in error in granting injunction against the co-owner.

5. Per contra, the learned counsel for the respondents would submit that already the said contention in the light of the document has been considered both by the trial Court as well as the First Appellate Court and it is the case of the plaintiffs that the suit property belongs exclusively to them. Upon considering the *prima facie* case and the *prima facie* proof of possession injunction can be granted.



CRP(MD).No.691 of 2022

WEB COPY

6. I considered the rival submission made on either side and perused the materials available on record.

7. It is not an admitted case of co-ownership or joint ownership. In the suit, the plaintiffs are praying exclusive ownership of the property. Therefore, the said submission has to be tested only in the trial. Now, pending the trial upon finding *prima facie* case, injunction is granted as early as on 29.10.2018 and we are now 2024 and injunction is continuing all along. In that view of the matter, when the trial Court as well as the First Appellate Court has considered the *prima facie* case and considered the balance of convenience and granted injunction, this Court cannot substitute its own opinion and undo the discretionary relief, which is granted by the trial Court as well as the First Appellate Court, in the Civil Revision Petition. Moreover no exception can be taken to the various findings and the conclusion arrived by the Courts below. In view thereof, I do not see any merit in the civil revision petition. Since the suit is of the year 2018, the learned trial Court is requested to consider and dispose of the same as expeditiously as possible.



CRP(MD).No.691 of 2022

WEB COPY

8. Accordingly, the Civil Revision Petition is disposed of. No costs.

Consequently, connected Miscellaneous Petition is closed.

02.07.2024

Index : Yes / No

Internet : Yes/ No

Rmk

To

- 1.The Additional Subordinate Judge, Dindigul.
- 2.The Additional District Munsif Court, Dindigul.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



CRP(MD).No.691 of 2022

D.BHARATHA CHAKRAVARTHY, J.

Rmk

**C.R.P(MD)No.691 of 2022
and C.M.P(MD).No.2863 of 2022**

02.07.2024