



C.M.A.(MD)No.334 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.334 of 2024

and

C.M.P.(MD)Nos.4603 & 5754 of 2024

K.Subashini

... Appellant / Respondent / Plaintiff

Vs.

1.K.Sivamani

2.S.Murugan

3.K.N.K.Murugan

4.S.Nadusuubulu (died)

5.K.Anandaraj

6.R.Selvakumar

7.R.Jeyakumar

8.R.Kannaiyan

9.K.Gurusamy

10.S.Rupashini

11.S.Venmurugan



C.M.A.(MD)No.334 of 2024

12.N.Vijaya

13.Rajamani

14.Ranjitha

15.Sentrayan

16.Oonjalai

17.Anbarasan ... Respondents / Petitioners / Defendants

Prayer: Civil Miscellaneous Appeal is filed under Section 104 r/w Order 43 Rule 1(r) of C.P.C, to set aside the order passed by the learned Additional District Judge, Periyakulam in I.A.No.2 of 2024 in O.S.No.100 of 2019, dated 15.03.2024.

For Appellant : Mr.M.Jefrin Mathew
For Respondents : Mr.S.Chandrasekar
for R1
: no appearance for R2 to R16

ORDER

The plaintiff in O.S.No.100 of 2019 on the file of the Additional District Judge, Periyakulam is the appellant herein. The suit was filed seeking the following relief:-

“Therefore it is prayed that this Court may be pleased to pass a preliminary decree and judgment for partition and separate possession in favour of the plaintiff in respect of her undivided share of 6 Acres 83 Cents of



C.M.A.(MD)No.334 of 2024

lands out of the total extent of 21 Acres 60 Cents against the defendants.

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(a) by declaring the joint possession into a separate possession of the suit properties and allot the plaintiff's share of 6 Acres 83 Cents of lands separately and exclusively and put her into a separate possession for her independent exclusive enjoyment.”

During the pendency of the suit, the plaintiff filed W.P.(MD)No.19495 of 2023 for conducting survey of the petition mentioned land. When the matter was taken up for hearing, the learned Government Pleader submitted that the petitioner's survey application was under consideration and that it will be taken up for further action on seniority basis. Recording the said submission, the writ petition was disposed of with direction to the survey authority to complete survey as expeditiously as possible. Based on the said direction, survey was conducted. The petitioner was also able to put up fencing. Thereafter, the first respondent herein Thiru.K.Sivamani filed W.M.P.(MD)No.22600 of 2023 for review. The said review application was disposed of on 08.11.2023 in the following terms:-

“9. According to the review petitioner, before conducting survey, he has raised certain objections before the concerned Taluk Surveyor, however, his objections were not considered.

10. At the time of conducting survey, if there is any objection raised by the parties, the concerned Taluk Surveyor ought to have conducted an enquiry as contemplated under Section 10 of the Tamil Nadu Survey and Boundaries Act and ought to have passed an order on the objections and thereafter, proceeded with the survey.



C.M.A.(MD)No.334 of 2024

11. It appears that no such order has been passed by the Taluk Surveyor. Therefore, the Taluk Surveyor, Bodinayakannur, Theni District, is directed to pass orders on the objections raised by the review petitioner. If the review petitioner is still having any grievance as against that order, he is having an appeal remedy under Section 11 of the Tamil Nadu Survey and Boundaries Act, 1923. Further, the conduct of survey itself does not confer any right on the parties. The review petitioner and the first respondent can work out their remedy in the pending suit in O.S.No.100 of 2019 pending on the file of the Additional District Court, Periyakulam. Theni.

12. Accordingly, W.M.P.(MD)No.22600 of 2023 is disposed of and the review application in Rev.Aplw.(MD)No.80994 of 2023 is rejected at the SR Stage itself.”

Availing such liberty, I.A.No.2 of 2024 was filed by the defendants seeking for temporary mandatory injunction for removal of the fence put up by the plaintiff. IA was allowed on 15.03.2024. Challenging the same, this Civil Miscellaneous Appeal has been filed.

2. The learned counsel appearing for the appellant submitted that the defendants have not suffered any injury and that therefore, interlocutory application filed by them is not maintainable. He also would add that the suit land faced constant threat from wild animals and only for protection of the suit property, fencing was put up and that the court below erred in directing its removal. He called upon this Court to set aside the impugned order and allow the civil miscellaneous appeal as prayed for.



C.M.A.(MD)No.334 of 2024

WEB COPY

3. The learned counsel appearing for the respondents submitted that the impugned order is well reasoned and that it does not warrant interference.

4. I carefully considered the rival contentions and went through the evidence on record. It is well settled that even a defendant can file IA seeking interim relief against the plaintiff. In any event, the suit on hand is more in the nature of partition suit and therefore, everybody is occupying the same position. It is seen that the suit property originally belonged to the fore-fathers of the defendants. One of the legal heirs had alienated 6 acres and 83 cents in favour of the plaintiff vide six registered sale deeds executed from the year 2010 onwards. Thus, the plaintiff is only a subsequent purchaser. The plaintiff is not having any separate patta in her favour. The respondents herein have produced the joint patta in which the plaintiff's name is also figuring as one of the pattadhars. Survey can never be done only at the instance of one of the joint pattadhars. In that event, he or she must obtain consent from the co-pattadhar. In this case, co-pattadhars have not given their consent. The plaintiff had purchased only undivided share to the extent of 6 acres and 83 cents. Through court decree, the land purchased by the plaintiff can be properly sub divided and earmarked. Till then, the question of plaintiff putting up



C.M.A.(MD)No.334 of 2024

fencing does not arise at all. The court below rightly ordered the removal of the fence. Interference is not warranted. The Civil Miscellaneous Appeal is dismissed. The court below is directed to dispose of O.S.No.100 of 2019 on merits and in accordance with law within a period of eight months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

20.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The Additional District and Sessions Judge, Periyakulam.



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C.M.A.(MD)No.334 of 2024

G.R.SWAMINATHAN, J.

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C.M.A.(MD)No.334 of 2024

20.08.2024