



C.R.P. (MD) No. 1671 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 1671 of 2024

and

C.M.P. (MD) No.9777 of 2024

1.R.Thalaimalairaj

2.R.Kuttiraj

... Petitioners/

Defendants

-VS-

1.Sethuram

2.Senthamaraikannan

... Respondents/
Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records of the lower court relating to the fair and decreetal order in I.A.No.4 of 2023 in O.S.No.72 of 2022 dated 28.02.2024 on the file of the District Munsif cum Judicial Magistrate No.1 at Srivilliputhur and set aside the same by allowing this civil revision petition.

For Petitioner : Mr.S.Yudhish Padman



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ORDER

The Civil Revision Petition is filed as against the order dated 28.02.2024 made in I.A.No.4 of 2023 in O.S.No.72 of 2022. The said petition is filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, to reject the plaint. The said petition is dismissed. Aggrieved by the same, the Civil Revision Petition is filed.

2. Mr.S.Yudhish Padman, the learned Counsel appearing on behalf of the petitioner would submit that on a perusal of the plaint itself, without describing as to how they got the easementary right and without even producing any document in their favour, the suit has been filed. As such, the Trial Court ought to have seen that the plaint does not disclose any cause of action at all and therefore, ought to have interfered in the application under Order VII Rule 11 of CPC, itself.

3. I have considered the said submission made by the learned Counsel for petitioner and perused the material records of the case. There is a difference between a weak case and the plaint not disclosing a cause of action. The case of the plaintiff is that from the time of the forefathers, the place earmarked as



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MNIJ is to be used as a pathway and to take water from the well and therefore, they are claiming rights over the same. In view thereof, whether they can prove the same and whether they have any documentary or oral evidence in respect of the same can be gone into only at the time of trial and accordingly, I am in agreement with the Trial Court dismissing the application in interlocutory application.

4. Accordingly, finding no merits, the Civil Revision Petition is dismissed, however, with liberty to the petitioner to take all the defenses including the contentions, which are raised in the present petition in the written statement before the Trial Court and it is for the Trial Court to consider the same in accordance with law. Consequently, the connected Miscellaneous Petition is closed. No costs.

26.07.2024

NCC : Yes/No

PKN



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D.BHARATHA CHAKRAVARTHY, J.

PKN

To

1. The District Munsif cum Judicial Magistrate No.1 at Srivilliputhur.

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