



C.R.P(MD)No.3339 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :31.01.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.3339 of 2023
and
C.M.P(MD)No.17280 of 2023

R.Sivakumar

... Petitioner

Vs

1.S.Ravi

2.R.Revathi

3.R.Vidhya

4.R.Priya

5.R.Prabha

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 30.10.2023 made in Memo in O.S.No. 36 of 2021 on the file of District Munsif Court, Bodinayakannur and allow the Civil Revision Petition.

For Petitioner : Mr.K.R.Shivashankar

For Respondents : Mr.K.Guhan



C.R.P(MD)No.3339 of 2023

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ORDER

This Civil Revision Petition is filed to set aside the docket order dated 30.10.2023 made in Memo in O.S.No. 36 of 2021 on the file of District Munsif Court, Bodinayakannur and allow the Civil Revision Petition.

2. The suit in O.S.No.36 of 2021 was filed by the respondent herein seeking a relief of declaration and for mandatory injunction to remove the portion which allegedly encroached by the defendant which are shown in the rough sketch annexed along with the plaint and for a consequential injunction etc. The defendant appeared and filed written statement. Along with the plaint, the respondents herein / plaintiffs filed I.A.No.2 of 2021, seeking interim injunction that was closed on 14.09.2023, directing the plaintiffs to get on with the trial. After that an application for appointment of an advocate commissioner was filed in I.A.No.3 of 2021 and an Advocate Commissioner was appointed and he was also filed his report on 30.07.2021. Thereafter, the present memo was filed by the plaintiffs on the basis of the Commissioner's report that



C.R.P(MD)No.3339 of 2023

the defendant is continuing the construction work by making encroachment. On the basis of the memo, the order passed, directing the parties, to maintain the status quo and apart from that the defendant was directed not to proceed with further construction till the disposal of the suit. The above said memo was closed by the order directing the parties to get on with the trial. Expressing grievance over the manner of disposal and the order passed by the trial Court, this Civil Revision Petition has been preferred by the petitioner herein / defendant.

3. Learned counsel for the petitioner stated that in the memo no notice was given to him and in his absence such an injunction order has been passed which according to the learned counsel for the petitioner is illegal.

4. Record of proceedings has been called for from the trial Court. In the record of proceedings submitted by the trial Court, the order passed by it, in the memo is also stated. Having closed the I.A.No.2 of 2021, directing the parties to get on the trial, if any grievance is expressed by the plaintiffs, either the petition ought to have been



C.R.P(MD)No.3339 of 2023

reopened for further hearing or atleast would have directed the plaintiffs to file appropriate petition seeking proper relief. But passing interim order that too directing the defendant to stop the construction and not to proceed, is not proper. On the sole ground, the above said order is set aside. However, in view of the grievance expressed by the respondents herein, liberty is granted to the respondents to file appropriate petition seeking proper relief. If any petition is filed by the respondents before the trial Court, let the petition be disposed of on merits within a week.

5. With this direction, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition stands closed. No costs.

31.01.2024

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

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C.R.P(MD)No.3339 of 2023

To

- 1.The District Munsif Court, Bodinayakannur.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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C.R.P(MD)No.3339 of 2023

G.ILANGO VAN, J.

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