

(2014) 08 MAD CK 0254

In the Madras High Court

Case No : C.R.P(MD) No. 1224 of 2014 and M.P.(MD) No. 1 of 2014

C. Ramanathan

APPELLANT

Vs

M. Nallammal

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) 08 MAD CK 0254

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Judgement

V.M. Velumani, J.—The Civil Revision Petition is filed against the fair and decreetal order dated 20.01.2014 made in I.A.No. 418 of 2013 in O.S.No.92 of 2013 on the file of the learned District Munsif cum Judicial Magistrate, Thirupathur.

2. The revision petitioners herein are the third parties and the first respondent is the plaintiff. The respondents 2 and 3 are the defendants in the suit.

3. The petitioners filed an application for impleading themselves as defendants 3 to 5 in O.S.No.92 of 2013 filed by the first respondent against the respondents 2 and 3 for permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the suit property. According to the petitioners, the suit property is the pathway to their property and the suit property was being used as pathway for more than 100 years. The first respondent/plaintiff denied the said allegation and stated that the suit property was never used by the petitioners as a pathway. The petitioners are claiming easementary right, which is beyond the scope of the suit. If at all the petitioners have any right over the suit property, they have to file a separate suit and establish their right and get the relief.

4. The learned Judge dismissed the application holding that the petitioners have not filed any document to show that they are the owners of the suit property and the suit is for permanent injunction against the respondents 2 and 3 herein and if

the petitioners have easementary right, they have to file a separate suit. It was further held that the first respondent as plaintiff has the right to choose the person against whom to get relief. Whatever relief the plaintiff get will bind only the parties in the suit. For the above reasons, the learned District Munsif held that the petitioners are not necessary and proper parties and dismissed the Interlocutory Application.

5. The learned counsel for the petitioners reiterated the averments made in I.A.No.418 of 2013 and submitted that the petitioners are necessary and proper parties in order to avoid multiplicity of proceedings. The learned counsel for the petitioners relied on the following judgments:

(i) Shri V.J. Thomas Vs. Shri Pathrose Abraham and Others,

(ii) 2004 (1) CTC 673

(iii) Savitri Devi Vs. District Judge, Gorakhpur and Others,

(iv) Gram Panchayat Garhi Vs. Dharambir and Others,

6. Per contra, the learned counsel for the first respondent contended that the petitioners are not proper and necessary parties to the suit and permanent injunction, which may be granted in their favour will not bind and affect the petitioners and that the suit property was not used at any point of time as pathway by the petitioners. The learned counsel for the first respondent relied on a judgment reported in 2013 (3) CTC 466.

7. From the available records, it is seen that in the written statement filed by the second respondent/first defendant it has been stated that the suit property is shown as grama natham in the revenue records and only after proper verification, assignment was given in favour of the first respondent. But the first respondent has violated the conditions. When proceedings are initiated to cancel the assignment given to the first respondent, the first respondent has filed O.S.No.92 of 2013. From the stand taken by the second respondent/first defendant, it is clear that the suit property is not a pathway, but it is only a grama natham. Hence, the petitioners are not necessary and proper parties to the suit and the learned Judge has rightly held that the petitioners can file separate suit for the relief, which they alleged to be entitled.

8. The judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case. In the judgments relied on by the learned counsel for the petitioners, it is held that proper and necessary persons must be impleaded as defendants. But in the present suit, the petitioners are not proper and necessary parties. On the other hand, the judgment relied on by the learned counsel for the first respondent squarely applies to the facts of the present case.

9. It is well settled that the first respondent as plaintiff is entitled to choose the person against whom, to seek the relief. If at all the petitioners are having any

grievance against the first respondent/plaintiff, it is open to them to file a separate suit and contest the same against the first respondent/plaintiff.

10. For the above reasons, there is no irregularity or illegality in the order passed by the Court below and hence, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently connected Miscellaneous Petition is closed.