

(2003) 07 MAD CK 0152

In the Madras High Court

Case No : C.R.P. PD. No. 1077 of 2003 and and CMP No. 7359 of 2003

Saraswathy, Muthusenapathy and Angaiarkanni

APPELLANT

Vs

Tamizharasi and Vanathi

RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2003) 3 CTC 229 : (2003) 4 LW 752 : (2003) 3 MLJ 444

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant;

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—What is challenged herein is an order of the learned Principal District Munsif, Karur dismissing an application filed by

the petitioners/plaintiffs seeking for a direction to the defendants to march their evidence, even before the evidence of the plaintiffs.

2. From the available materials and the submissions made before the Court, it could be seen that it is a suit for permanent injunction filed by the

petitioners herein; that the suit is ripe for trial; and that at that time, the instant application has been filed for a direction to the defendants to march

their evidence first and thereafter giving an opportunity to the plaintiffs to march their evidence. The said application has been filed by the plaintiffs

u/s 101 of Evidence Act and Section 151 of C.P.C.

3. Admittedly, the petitioners herein have filed a suit for permanent injunction. In order to get a relief, a duty is cast upon them and the onus is on

them to prove not only the possession, but also the lawful possession of the property at the time of filing of the suit. They cannot expect the

opposite party to prove the defence first. Under the circumstances, a direction as asked for by the plaintiffs in the instant application cannot be

ordered. The lower court was perfectly correct in dismissing the application and no infirmity or illegality is noticed in the order of the lower court.

4. Hence, the civil revision fails and the same is dismissed. Consequently, connected CMP is also dismissed.