

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1117 of 2015

and M.P.No.1 of 2015

1.G. Jobai
2.J.Arivazhagan
3.Senthilkumar

... Petitioners

vs

1.R. Viji
2.The Commissioner,
Corporation of Chennai
Ripon Buildings,
Chennai-600 003

3. Zonal Officer,
VII Division,
Corporation of Chennai,
Shenoy Nagar,
Chennai-600 030

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution

of India against the fair and final order dated 17.2.2015 in I.A.No.13523 of 2014 in O.S.No.853 of 2012 on the file of the learned VI Assistant Judge, City Civil Court, Madras.

For Petitioners : Mr.V.V. Sairam
For 1st respondent: Mr.K. Manikandan

ORDER

The defendants 1 to 3 in O.S.No.853 of 2013 on the file of VI Assistant Judge, City Civil Court, Chennai have filed the above Civil Revision Petition, challenging the fair and final order passed in I.A.No.13523 of 2014 in O.S.No.853 of 2012.

2. The plaintiff filed a suit in O.S.No.853 of 2013 for mandatory injunction directing the defendants 4 and 5 to demolish the unauthorised construction, put up by the defendants 1 to 3, and for permanent injunction.

3. The defendants filed their written statement and are

contesting the suit. The defendants 1 to 3 filed an application in I.A.No.13523 of 2014 under Order VII Rule 11 of Civil Procedure Code to reject the plaint on the ground that the suit filed by the plaintiff is not maintainable in view of the judgment reported in **2002(2) CTC 230 (Chennai Metropolitan Development Authority, rep by its Member Secretary vs Abdur Rehman)**.

4. The said application was opposed by the plaintiff, stating that the suit is very much maintainable. The trial court, after taking into consideration of both sides, dismissed the application.

5. Mr.V.V. Sairam, learned counsel appearing for the petitioners submitted that the trial of the suit had already commenced and P.W.1 is in the box. Since it is brought to the notice of this court that the trial of the suit had already begun, the issue, which is raised in the present application, can also be decided by the trial court, while deciding the suit. The learned counsel also submitted that the defendants 1 to 3 are going to file an application, seeking for permission to file an additional written statement, raising the issue

with regard to the maintainability of the suit.

6. Mr.K. Manikandan, learned counsel appearing for the first respondent submitted that the issue, raised by the defendants in the present application, cannot be raised in the additional written statement for the reason that the defendants themselves have filed another suit in O.S.No.3503 of 2013, which is also pending before the very same Court and being tried together.

7. Having regard to the submissions made by the learned counsel on either side, while dismissing the Civil Revision Petition, any application is being filed by the defendants 1 to 3 to file additional written statement, the said application can be disposed of by the trial court, on merits and in accordance with law, taking into consideration the contention raised by the plaintiff.

8. The learned VI Assistant Judge, City Civil Court, Madras is directed to dispose of the suit in O.S.No.853 of 2013, on merits and in accordance with law, within a period of four months from the date of

receipt of copy of this order.

9. With the above direction, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

20-04-2015

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Index:no
website:yes

Note: Issue Order copy on 23.04.2015

To

The VI Assistant Judge, City Civil Court, Madras

M. DURAISWAMY,J.,

C.R.P.(PD)No.1117/2015

20-04-2015