

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.(PD).No.1299 of 2015
and M.P.No.1 of 2015

Chinnapaiyan @ Kanagaraj .. Petitioner/2nd defendant

Vs.

1.R.Hari Venkatesh .. 1st respondent/plaintiff

2.C.Srinivasan .. 2nd respondent/1st defendant
s/o Chandrasekaran

3.Angayee
4.Srinivasan
s/o Chinnapaiyan

5.Settu
6.Dhanapal .. Respondents 3 to 6/defendants 3 to 6

(Respondents 3 to 6 herein are
given up as un-necessary parties vide
memo filed)

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.140 of 2015 on the file of the Principal Sub-Court, Salem as abuse of process of law.

For Petitioner : Mr.T.Murugamanickam

For R1	: Mr.R.Syed Mustafa
For R2	: No appearance
R3 to R6	: given up

ORDER

The Civil Revision Petition is filed to strike off the plaint in O.S.No.140 of 2015 on the file of the Principal Sub-Court, Salem.

2.The petitioner herein is the tenant under the second respondent namely, C.Srinivasan, who is in possession and enjoyment of the suit property. The petitioner herein has re-claimed the property, raised mango saplings and he is in possession and enjoyment of the same. Since the first respondent herein has purchased the suit property from the second respondent and both of them attempted to interfere the petitioner's possession, the petitioner herein was forced to file a suit in O.S.No.1128 of 2011 on the file of the I Additional District Munsif Court, Salem for injunction restraining the defendants from interfering with the petitioner's peaceful possession and enjoyment of the suit property till he is evicted under due process of law. Along with the suit, the petitioner herein has filed I.A.No.2140 of 2011 for interim injunction restraining the defendants 1 and 2(respondents 2 and 1 herein) from interfering with the petitioner's peaceful possession

and enjoyment of the suit property. The defendants 1 and 2 were engaged a same counsel, but they have not filed counter in that application. So exparte order of interim injunction was passed on 11.07.2012, interim injunction was granted, Advocate Commissioner was appointed and filed his report. Without considering the aforestated aspects, the first respondent herein has filed the present suit in O.S.No.140 of 2015, wherein he has mentioned only the filing of O.S.No.1128 of 2011, but he has not mentioned the exparte order of injunction granted by the trial Court on 11.07.2012. So there is suppression of material fact by the first respondent and hence, he prayed for striking off the plaint in O.S.No.140 of 2015.

3.Resisting the same, learned counsel for the first respondent submits that this petition itself is not maintainable, because the suit filed by the first respondent is a comprehensive suit for declaration of title and injunction. He further submits that patta stands in the name of the first respondent and revenue record has also been changed. Since the suit is filed for declaration of title and injunction, he has also filed an application in I.A.No.98 of 2015 for interim injunction, but no interim injunction was granted. The first

respondent has also filed another application in I.A.No.360 of 2015 for setting aside the exparte order of injunction granted on 11.07.2012 passed by the trial Court. So there is no abuse of process of the Court and therefore, he prayed for dismissal of this revision petition.

4.Considered the rival submissions made on both sides and perused the typed set of papers.

5.It is admitted by both sides that originally one Srinivasan/second respondent herein was the owner of the suit property. The case of the revision petitioner is that he is a tenant under the second respondent and he has re-claimed the property, raised mango saplings and he is in possession and enjoyment of the property from 1978 onwards. Now the second respondent has sold the property to the first respondent. Since the respondents 1 and 2 attempted to interfere with the petitioner's possession of the suit property, the petitioner has filed O.S.No.1128 of 2011 on the file of the I Additional District Munsif Court, Salem along with I.A.No.2140 of 2011 for interim injunction. The first and second respondents engaged a same counsel and as they have not filed

counter, an ex parte order of interim injunction was granted on 11.07.2012.

6.Now the first respondent herein has filed an application in I.A.No.360 of 2015 in I.A.No.2140 of 2011 in O.S.No.1128 of 2011 for setting aside the ex parte order of injunction passed in I.A.No.2140 of 2011 on 11.07.2012.

7.According to the learned counsel for the petitioner, the first respondent has suppressed the material fact in the plaint filed in O.S.No.140 of 2015 that the petitioner herein has obtained interim injunction.

8.On perusal of the plaint in O.S.No.140 of 2015, it reveals that the first respondent has mentioned about the suit in O.S.No.1128 of 2011, but he has not mentioned about the interim injunction application in I.A.No.2140 of 2011. The first respondent has filed the present suit in O.S.No.140 of 2015 for declaration of title and injunction. It is to be noted that possession has to be proved by facts. The suit filed by the first respondent is a comprehensive suit and the trial Court has to be decided that who

will be in possession of the suit property after considering oral and documentary evidence. In such circumstances, there is no suppression of material fact. Furthermore, in the cause of action and body of the plaint, the suit filed by the petitioner has been mentioned and mere non mentioning of the interim injunction application in the present suit will not be taken away the rights of the petitioner herein to file suit for declaration of title and injunction.

9.Considering the aforestated circumstances of the case, the suit filed by the first respondent is a comprehensive suit and the trial Court has to be decided that who will be in possession of the suit property and whether the possession is legal. Under such circumstances, I am of the considered opinion, there is no reason for striking of the plaint. Therefore, I do not find any merits in this petition and this revision petition is dismissed as devoid of merits.

10.In the result, this Civil Revision Petition is dismissed. However, since two parties are claiming possession of the same suit property, it is a fit case for giving direction to the trial Court to try both the suits jointly. Therefore, the Presiding Officer, I Additional

District Munsif Court, Salem, is directed to transmit all the records pertaining to O.S.No.1128 of 2011 to the file of the Principal Sub-Court, Salem. The Principal Sub-Court, Salem is directed to try the suit in O.S.No.1128 of 2011 along with the suit in O.S.No.140 of 2015, which is pending on its file, jointly. The first respondent herein is directed to co-operate for early disposal. No costs. Consequently, connected Miscellaneous Petition is closed.

08.06.2015

Index:Yes/No
Internet:Yes/No

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To

- 1.The Principal Sub-Court, Salem.
- 2.I Additional District Munsif Court, Salem.

R.MALA,J.

Kj

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