

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.(P.D.) Nos.1878 and 1879/2015

CRP (PD) No.1878 of 2015:-

1.K.Ravi

2.K.Sundar

3.K.Bhaskar

4.Kala

5. Maheswari

: Petitioners

versus

1.V.Palanivel

2.V.Sundararajan

: Respondents

PRAYER: Revision filed to strike off the plaint in O.S.No.86 of 2014 on the file of the Sub Court, Tambaram.

CRP (PD) No.1879 of 2015:-

K.Ravi

: Petitioner

versus

1.R.Kailash Chand Sharma

2.V.Palanivel

: Respondents

PRAYER: Revision filed to strike off the plaint in O.S.No.213 of 2015 on the file of the District Munsif Court, Alandur.

For petitioners : Mr.V.Raghavachari

For respondents : Mr.T.Sundarrajan

COMMON ORDER

These civil revision petitions are at the instance of the defendants in O.S.No.86 of 2014 on the file of Subordinate Court, Tambaram and the first defendant in O.S.No.213 of 2015, on the file of District Munsif Court, Alandur, and the prayer is to strike off the plaint, invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

Brief facts :-**C.R.P.(PD) No.1878 of 2015 :-**

2. The respondents, along with their sister filed a suit for partition against the petitioner and obtained a preliminary decree in O.S.No.463 of 2002 on the file of District Munsif Court, Alandur. Subsequently, final decree was passed in I.A.No.1081 of 2005. The petitioners filed applications to set aside the exparte decree and to condone the delay. In the application in I.A.No.399 of 2010, the respondents filed I.A.No.430 of 2014 for injunction. It is the grievance of the petitioners that without disclosing the said application, the respondents filed a fresh suit in O.S.No.86 of 2014 for permanent injunction before the Sub Court, Alandur, and obtained interim injunction. The petitioners are therefore before this Court. The respondents filed a counter affidavit and justified the initiation of the suit in O.S.No.86/2014.

C.R.P.(PD) No.1879 of 2015 :-

3. The first respondent filed a suit in O.S.No.213 of 2015 before the District Munsif Court, Alandur, against the petitioner, praying for a decree of permanent injunction. The first respondent claimed that he took the subject property on lease from the second respondent herein. The first respondent contended that the petitioner earlier trespassed into the property and made an attempt to dispossess him. The first respondent apprehends that he would be dispossessed forcibly and as such, a suit for injunction was filed. The petitioner, claiming that it was a vexatious suit filed in collusion with the second respondent, has come with this revision petition to axe the plaint.

Summary of submissions:-

4. The learned counsel for the petitioners submitted that the suit in O.S.No.86 of 2014 is a patent abuse of the process of court, in view of the suppression of the pendency of similar applications for injunction in I.A.No.430 of 2014 in I.A.No.399 of 2010 in O.S.No.463 of 2002, on the file Principal District Munsif, Ambattur. According to the learned counsel, the respondents projected a false case as if the decree in O.S.No.463 of 2002 has become final. It was his contention that the Advocate Commissioner appointed in O.S.No.86 of 2014 found that the first petitioner is in possession of the property and the hut constructed by him was assessed to

property tax and the electricity board has given service connection. It was contended that the second respondent through his "yes man", the first respondent herein, filed a collusive suit in O.S.No.213 of 2015, before the District Munsif, Ambattur. According to the learned counsel, all this would show that the respondents are guilty of suppression of material particulars besides forum shopping. The learned counsel contended that the respondents in C.R.P.No.1879 of 2015 created a false lease agreement to make it appear as if the first respondent is in possession of the subject property.

5. The learned counsel for the respondents contended that the respondents have disclosed the pendency of the interlocutory applications in O.S.No.463 of 2002 and as such, there was no such act of suppression. According to the learned counsel, the application for injunction in I.A.No.430 of 2014 was only till the disposal of I.A.No.399 of 2010 and therefore, fresh suit for injunction is legally maintainable. The learned counsel explained the circumstances under which the suit in O.S.No.86 of 2014 was instituted by the respondents and the suit in O.S.No.213 of 2015 by the tenant. Finally, it was contended that the remedy is only to file an application before the Trial Court to reject the plaint.

The issue:-

6. The only question that arises for consideration is whether the petitioners are entitled to invoke the supervisory jurisdiction on the facts and circumstances of the case.

Discussion:-

7. The respondents in C.R.P.(PD) No.1878 of 2015, along with their sister, being the legal heirs of Thiru.Vedachalam Chettiar, filed a suit for partition in O.S.No.112 of 1998 on the file of Sub Court, Poonamallee. The suit was transferred and renumbered as O.S.No.463 of 2002 on the file of District Munsif Court, Alandur. The Trial Court passed an ex parte preliminary decree on 13 August 2003. Thereafter, vide order dated 10 March 2008 in I.A.No.1081 of 2005, ex parte final decree was passed by the Trial Court.

8. The respondents have produced the final decree indicating that 26 cents of land on the northern side was allotted jointly to them along with their sister. The hut marked as "H" in the Commission Report is part of the property allotted to the respondent.

9. The petitioners filed two applications before the District Munsif Court, Alandur, one to condone the delay of 1907 days in filing the application and another to set aside the decree.

10. The respondents filed interlocutory applications in the applications filed by the petitioners in O.S.No.463 of 2002 for injunction pending adjudication. Those applications are stated to be pending. The petitioners, in the counter affidavit filed in the injunction petition, challenged the very maintainability of the applications.

11. The alleged trespass at the instance of the petitioners on 18 April 2014 was taken as a cause of action by the respondents to file a fresh suit in O.S.No.86 of 2014.

12. The petitioners filed a written statement in O.S.No.86 of 2014 and contested the suit. The written statement filed in February 2015 contain the details of prior proceedings. The petitioners wanted the trial court to dismiss the suit *in limine*. It was only thereafter, the petitioners have come with this civil revision petition.

13. The first respondent in C.R.P. (PD) No.1879/2015, claimed that he is a tenant under the first respondent in C.R.P. (PD) No.1878/2015. The

first respondent wanted the Trial Court to injunct the petitioner in C.R.P.No.1879/2015 from interfering with his peaceful possession and enjoyment of the property.

14. The petitioners filed an independent suit in O.S.No.259 of 2014 before the Principal District Munsif Court, Alandur, for permanent injunction. Though reference was made to the pendency of the said suit in O.S.No.259 of 2014, in the memorandum of grounds, the petitioners have not produced the copy of the plaint to prove that they have disclosed all the prior proceedings.

15. The petitioners have already entered appearance in the suit in O.S.No.86 of 2014 and even filed the written statement. Nothing prevented the petitioners from filing application under Order VIII Rule 11 of Code of Civil Procedure, to reject the plaint. The suit in O.S.No.213 of 2015 is pending before the District Munsif, Alandur. The suit filed by the petitioners is also pending before the very same Court. It is always open to the petitioners to move the Trial Court for appropriate relief by invoking the relevant provisions of Civil Procedure Code.

16. The jurisdiction under Article 227 of the Constitution of India is not in the nature of an appellate proceedings. It is also not an extension of

original proceedings. The jurisdiction is primarily to correct errors of jurisdiction. In appropriate cases, it is open to the High Court to step in, to prevent miscarriage of justice or abuse of process of Court. Even in such cases the Court must, at the first instance, consider as to whether the alternative remedy is not adequate and the matter requires immediate intervention. Bypassing the alternative remedy should always be an exception.

17. It is true that the respondents have not disclosed in O.S.No.86 of 2014 the pendency of injunction application in I.A.No.403 of 2012 in I.A.No.339 of 2010 in O.S.No.463 of 2002. However, such non disclosure alone cannot be a reason to bypass the remedy provided under Order VIII Rule 11 of Code of Civil Procedure. I am therefore of the view that the petitioners have not made out a case for invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

18. In the upshot, I dismiss the Civil Revision Petitions. No costs. Consequently, M.P.No.1/2009 is also dismissed.

30.10.2015

Index:Yes/no
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To

The District Munsif Court, Alandur.

K.K.SASIDHARAN, J.

(tar)

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