

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.06.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.4918 of 2014 &
M.P.No.1 of 2014

1.R.Rajan

2.R.Palaniammal

3.R.Mathivanan

... Petitioners

v.

1.A.R.B.Ram Santhosh

2.S.Selvi @ Poonkuzhali

3.K.Nandhitha

4.R.Mani

5.M.Rathi

6.M.Thilak

7.M.Kavitha

8.A.Ra.Balasubramani

9.B.vijayalakshmi

10.R.Ananya

11.R.Rajeshwari

12.S.Deivamangai

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.10.2014 made in I.A.No.299 of 2014 in O.S.No.200 of 2014 on the file of Principal Subordinate Judge, Salem.

For Petitioner : Mr.M.Venkatachalapathy,
Senior Counsel
for Mr.P.Sathish

For Respondents : Mr.M.Venkatachalam
for – R1

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Given up – R2 to R12
(Endorsement made on 15.6.2015)

O R D E R

Challenging the order passed in I.A.No.299 of 2014 in O.S.No.200 of 2014 on the file of Principal Subordinate Court, Salem, the defendants 1 to 3 have filed the above Civil Revision petition.

2. The plaintiff filed the suit in O.S.No.200 of 2014 for partition, permanent injunction and for mesne profits. Along with the said suit, the plaintiff also filed an application in I.A.No.275 of 2014 for interim injunction restraining the defendants 1 to 3, 10 and 11 from in any way further digging the pit by using man power machinery like JCB etc., and by explosives like Jelatine sticks, Detonators or make any other construction in the pit. The respondents entered appearance in the suit and filed their counter in the interim application. Thereafter, the plaintiff filed an application in I.A.No.299 of 2014 under Order VI Rule 17 of CPC to include the prayer for

permanent injunction restraining the defendants 1 to 3, 10 and 11 from in any way further digging the pit by using man power machinery like JCB etc., and by explosives like Jelatine sticks, Detonators or make any other construction in the pit.

3. In the affidavit filed in support of the application, the plaintiff contended that by digging the pit, the defendants are causing damage to the suit property and therefore, the amendment of the pleading is necessary. The defendants have not filed their written statement till this date.

4. Though, the application was opposed by the defendants, the Trial Court allowed the application.

5. Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the petitioner submitted that if the application to amend the plaint by incorporating the prayer for interim injunction is allowed, that would affect the defendants getting their approval from the Pollution Control Board and from the other authorities for running the Sago Factory.

6. Since the suit is at a preliminary stage, I am of the view that the contention raised by the learned Senior Counsel appearing for the petitioner cannot stand for the reason that mere including a prayer for permanent injunction will not stand in the way of authorities granting

any permission to the defendants. The prayer sought for in the suit has to be established by the plaintiff by oral and documentary evidences. In the absence of any evidence given with regard to the said prayer, the contention raised by the learned Senior Counsel appearing for the petitioner cannot be accepted. The defendants shall have an opportunity of filing written statement disputing the prayer sought for in the plaint.

7. Since the amendment sought for by the plaintiff is a pre-trial amendment, that too, even prior to filing of the written statement, I am of the view that the trial Court has rightly allowed the application.

8. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. The learned Senior Counsel appearing for the petitioner submitted that the Trial Court may be directed to dispose of the interim injunction application in I.A.No.275 of 2014 within a stipulated time. Having regard to the submission made by the learned Counsel on either side, I direct the Principal Subordinate Court, Salem to dispose of the interim application in I.A.No.275 of 2014 on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : No
Internet : Yes

15.06.2015

Note : Issue by 16.06.2015
Rj

To

The Principal Subordinate Court,
Salem

M. DURAISWAMY,J.,

Rj

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