

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.No.3380 of 2015

and

M.P.No.1 of 2015

J.Nanjan ... 1st Respondent/Plaintiff/Petitioner

Vs.

1.K.Bellam ... Petitioner/3rd Defendant/Respondent

2.The Tahsildar
Kotagiri Taluk, The Nilgiris

3.The Collector of Nilgiris
Ootacamund,
The Nilgiris District ... Respondents 2 & 3/Defendants 1 & 2/
Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 24.03.2015 made in I.A.No.177 of 2014 in O.S.No.60 of 2005 on the file of the District Munsif Court, Kotagiri.

For Petitioner : Mr.Dr.R.Gouri

For Respondent : Mr.Ma.P.Thangavel, for R1
R2 and R3 No Appearance

ORDER

The present Civil Revision Petition is filed against the order dated 24.03.2015 made in I.A.No.177 of 2014 in O.S.No.60 of 2005 on the file of the District Munsif Court, Kotagiri. The third defendant in the suit filed an application in I.A.No.177 of 2014 in O.S.No.60 of 2005 to decide the maintainability of the suit as preliminary issue.

2. In the present Civil Revision Petition, the third defendant in the suit is the first respondent. The other respondents 2 and 3 are the Government authorities. Though respondents 2 and 3 are served, they have not chosen to appear before the Court either in person or through a counsel. However, the real contest is between the revision petitioner and the first respondent herein, who is represented by a counsel.

3. Heard the learned counsels appearing for the petitioner and the learned counsel appearing for the first respondent.

4. The plaintiff, who is the revision petitioner herein had filed the suit in O.S.No.60 of 2005 on the file of the District Munsif Court, Kotagiri for the following reliefs:

"(a) Declare that the proceedings of the defendant No.1 in Pa.ma.II- 227/03-04 dated 30.05.2003 and all his subsequent proceedings in the interference of the plaintiff's sub-division in the suit scheduled property is illegal.

(b) Grant of a mandatory injunction directing the defendant No.1 to restore the sub-division order passed in favour of this plaintiff in his proceedings in ko.mu.pa.ma.11 499/84 dated 03.06.1985."

5. Thus, the prayer in the suit is to declare the proceedings of the Tahsildar, Kotagiri Taluk dated 30.05.2003 and the consequential proceedings is illegal. The suit was filed in the year 2005 questioning the proceedings of the year 2003.

6. The 1st respondent herein filed an application in I.A.No.177 of 2014 in O.S.No.60 of 2005 to decide the maintainability of the suit as preliminary issue, since an appeal remedy is available under the revenue standing orders against the order of the Tahsildar.

7. The first respondent filed the written statement in the year 2006. But for one reason or the other, the suit is still pending. While so, the interim application in I.A.No.177 of 2014 was filed to decide the maintainability of the suit as preliminary issue and the same was allowed.

8. The learned counsel for the first respondent sought to sustain the order stating that the issue involved is the question of law and hence, the same can be decided as preliminary issue.

9. On the other hand, the learned counsel for the revision petitioner submitted that the issue involved is a mixed question of law and fact. The learned counsel further submitted that the first respondent had filed the interim application only in the year 2014,

though the first respondent had filed the written statement in the year 2006.

10. Considered the submissions made by either sides.

11. I am of the considered view that the issue relating to the maintainability of the suit on the ground that an appeal remedy is available under the revenue standing order is a mixed question of law and fact. Further, the matter has been pending for the past 10 years without any progress.

12. In these circumstances, I am of the view that the entire suit has to be decided and the issue as to the maintainability can only be one of the issues and the same cannot be decided as preliminary issue. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. Further, a direction is issued to the learned District Munsif, Kotagiri to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To
The District Munsif Court,
Kotagiri.

+ 1 cc to M/s. R. Gowri, Advocate Sr.51802

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