In the High Court of Judicature at Madras

Date : 01.09.2015

Coram :

The Hon'ble Mr. Justice D. Hariparanthaman

C.R.P. No: 3384 of 2015

Palani
S/o. Periya thiruman
Harijan Colony, Gundumoopanur
Nagalur Village, Bhavani Taluk
Erode District. ... Petitioner

-vs-

1. Tamilvanan
S/o. K.R. Chinnasamy
Thakarakottai, Kondayampalayam
Nagalur Village, Bhavani Taluk
Erode District.

2. Ponnappa Nadar
Nadar Colony, Nagalur Village
Bhavani Taluk
Erode District.

3. Marayi
W/o. Krishnan

4. Periya Kannamma
W/o. Raman

5. Chinna Kannamma
W/o. Murugan

6. Valarmathi @ Maheswari

respondents 3 to 6 are residing at
Harijan Colony, Gundumoopanur
Nagalur Village, Bhavani Taluk
Erode District. ... Respondents

.. .. ..

Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and final order dated 03.07.2015 passed in I.A. No: 112 of 2014 in O.S. No: 445 of 2010 on the file of the 1st Additional District Munsif Court, Bhavani, Erode District.

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For petitioner :: M/s. I.C. Vasudevan

.. .. ..

O R D E R

The revision petitioner is the second defendant in O.S. No: 445 of 2010 on the file of the First Additional District Munsif Court, Bhavani. The first respondent herein is the plaintiff in the said suit. The revision petitioner filed I.A. No: 112 of 2014 in O.S. No: 445 of 2010 under Order VII Rule 11 C.P.C. for rejection of the plaint.

2. The Trial Court passed an order on 03.07.2015 in I.A. No: 112 of 2014 in O.S. No: 445 of 2010 rejecting the interim application. Hence this Civil Revision Petition.

3. Heard the learned counsel appearing for the revision petitioner.

4. Learned counsel appearing for the petitioner submitted that already the first respondent / Plaintiff filed O.S. No: 28 of 1999 with the same prayer and the said suit was withdrawn as "Settled out of Court" without any liberty to file a fresh suit and hence, the filing of the fresh suit with the same prayer is a bar.

5. I have considered the said submission made by the learned counsel appearing for the revision petitioner.

6. Before the trial Court also the same argument was advanced. The trial Court considered the same in detail and rejected such a plea. The trial Court noted that the earlier suit was withdrawn as settled out of Court. It had also recorded that after the settlement the new pattas were also issued after due measurements and also the petitioner herein vacated from the encroached portion of the property belonging to the respondent / plaintiff and that the plaintiff had been in enjoyment of the property. Subsequently, the defendant gradually started encroaching over the lands and hence, the present suit if filed. Taking into account the aforesaid pleadings, the trial Court rejected the application in I.A. No: 112 of 2014.

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7. It is also seen that the application to reject the plaint was filed after the plaintiff examined two witnesses. The trial Court held that the application under Order VII Rule 11 C.P.C. could not be decided based on the deposition of P.Ws. 1 and 2 and the application shall be confined to the pleadings made in the plaint. But the entire case of the revision petitioner to seek the rejection of the plaint is based on the deposition of P.Ws. 1 and 2. The trial Court rightly held that the same is not permissible and that the revision petitioner could make these arguments at the time of final disposal of the suit.

8. I do not find any infirmity with the view expressed by the trial Court. Hence, the Civil Revision Petition stands dismissed. Connected miscellaneous petition is closed. There shall be no orders as to the costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer
1st Additional District Munsif
Bhavani, Erode District.

+1 cc to M/s. I.C.Vasudevan, Advocate, sr.47076 (05/10/2015)

C.R.P. No: 3384 of 2015

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