

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.4537 of 2015

and

M.P.No.1 of 2015

Mohammed Ayub Sahib (Died)

1.Mohammed Ishaq

Mohammed Salaha (Died – 12.10.2015)

2.Mohammed Ismail

Rizwana Begum (Died)

3.Rehana Begum

4.Mohammed Imthiyas

5.Mohammed Hayathuzama

6.Mohammed Khalkurama

7.Mohammed Khizar

.. Plaintiffs/Petitioners/Petitioners

Vs.

1.B.N.Sridhar Murthy

B.N.Surya Narayanan (Died)

2.B.V.Nanjundiah

3.Leela

4.Padma

5.B.V.Ramanath

6.Shantha

7.Lakshmi

8.B.V.Srinivasa Murthy

.. Defendants/Respondents/Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 12.09.2015 made in I.A.No.127 of 2015 in O.S.No.109 of 2000 on the file of the District Munsif Court, Hosur.

For Petitioner : Mr.V.Raghavachari

ORDER

Heard the learned counsel appearing for the revision petitioners.

2. The revision petitioners have come forward with the present Civil Revision Petition challenging the impugned order dated 12.09.2015 made in I.A.No.127 of 2015 in O.S.No.109 of 2000,

wherein the application filed to strike out the additional issue came to be dismissed.

3. The learned counsel appearing for the revision petitioners would submit that the revision petitioners as plaintiffs had filed the suit in O.S.No.279 of 1996 on the file of the District Munsif Court, Hosur for declaration of title and injunction. The said suit was decreed in respect of declaration of title, however the suit was dismissed in respect of the prayer for injunction. Against the said order, an appeal was preferred in A.S.No.9 of 2000 and the same was also dismissed. Thereafter, a Second Appeal was also preferred and was dismissed, against which the defendants preferred a Special Leave Petition before the Hon'ble Apex Court in SLP.No.7770 of 2012 and the same was dismissed on 08.05.2012.

4. While so, during the pendency of the appeal, the revision petitioner/plaintiff filed a suit in O.S.No.109 of 2000 seeking for recovery of possession after the removal of the bunk shop from the schedule mentioned property. The defendants filed written statement and also additional written statement. However, after the commencement of trial and when the examination of P.W.1 is over, an

additional issue came to be framed on 16.02.2015 viz., "Whether the description of the suit property is incorrect as alleged by the defendant". Thereafter, the revision petitioners filed an application in I.A.No.127 of 2015 to strike out the additional issue. However, the Trial Court after hearing both sides dismissed the said application, against which the present Civil Revision Petition has been preferred.

5. Challenging the impugned order, the learned counsel appearing for the revision petitioners would submit that when the identity of the suit properties is not disputed by the defendant in their written statement, there is no necessity to frame such an additional issue on 16.02.2015. However, the Trial Court without considering the same has framed such an additional issue and hence, the learned counsel for the revision petitioners prayed for setting aside the impugned order.

6. Resisting the same, the learned counsel appearing for the respondents would submit that in the description of suit properties in both the suits viz., O.S.No.279 of 1996 and O.S.No.109 of 2000, only the patta number and the measurement along with the boundaries were mentioned and nowhere, the Survey number has been

mentioned. Whereas the respondents/defendants are in possession properties in S.No.80/31 A. Further, even in the written statement filed by the defendants, it has been stated that out of the 140 sq.ft, the defendants are entitled to 60 sq.ft. Hence, the defendants had raised the plea that the suit property has not been properly described and for the said reason only, an additional issue was framed. The said factum was rightly considered by the Trial Court and thus, the learned counsel for the respondents prayed for dismissal of the Civil Revision Petition.

7. Considered the rival submissions made by both sides and perused the typed set of papers.

8. The revision petitioners as plaintiffs had filed the suit in O.S.No.279 of 1996 on the file of the District Munsif Court, Hosur for declaration of title and injunction. The said suit was decreed in respect of declaration of title and dismissed in respect of the prayer for injunction. Against the said order, the appeals preferred by the defendants upto the Hon'ble Apex Court ended in dismissal. While so, during the pendency of the appeal, the revision petitioner/plaintiff filed a suit in O.S.No.109 of 2000 seeking for recovery of possession after

the removal of the bunk shop from the schedule mentioned property. The defendants filed written statement and also additional written statement. However, after the commencement of trial and when the examination of P.W.1 is over, an additional issue came to be framed on 16.02.2015 viz., "Whether the description of the suit property is incorrect as alleged by the defendant". Thereafter, the revision petitioners filed an application in I.A.No.127 of 2015 to strike out the additional issue stating that there is no dispute with regard to the identity of the property. However, it is the contention of the respondent that the suit property has not been specifically mentioned.

9. On perusal of the decree in O.S.No.279 of 2006, it is seen that the schedule of the property is mentioned as follows:

"Property house site situated in Berikai town and village (post) Hosur taluk within the Sub Registration District of Hosur and Registration District of Krishnagiri covered under Natham Patta 568 bounded as follows:

East : Babiah Matam lane, and of Razia Begum.

West : Malur High Way

North : Shop of Appiah @ Venkatesappa & the land of Razia Begum.

South : Shop of Mohamed Saleha

*Within this the property measuring 140 sq.ft. East to West
on the North and South 28 ft. North to South on the East &
West 5 ft."*

10. Admittedly, no survey number has been given and only the patta number has been mentioned therein. Even in the present suit in O.S.No.109 of 2000, no survey number has been mentioned. Further, in paragraph 11 of the written statement filed in O.S.No.109 of 2000, it was specifically mentioned that the suit property measuring an extent of 140 sq.ft is inclusive of the 60 sq.ft belonging to the first defendant. Furthermore, the defendants had raised the plea that the suit property has not been properly described. Hence, in order to resolve the dispute between both parties, the Trial Court is necessitated to frame an additional issue as to whether the description of the suit property is incorrect as alleged by the defendant?

11. In these circumstances, I am of the view that the impugned order passed by the Trial Court does not warrant interference by this Court. Accordingly, the Civil Revision Petition stands dismissed as devoid of merits. Consequently, connected miscellaneous petition is

closed. No costs.

12. At this juncture, the learned counsel for the respondents prayed for earlier disposal of the suit stating that the suit is of the year 2000. Considering the submission made by the learned counsel for the respondents, the learned District Munsif, Hosur is directed to dispose of the suit in O.S.No.109 of 2000 within a period of 4 months from the date of receipt of a copy of this order.

08.12.2015

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To

The learned District Munsif,
Hosur

R.MALA, J.

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