

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1580 of 2012

and

M.P.No.1 of 2012

1.Theerthagiri
2.Saravanan
3.Sakthivel
4.Govindasamy
5.Thangaraj
6.Dhanabakiyam

... Petitioners

vs.

1.Arulmani
2.Jaykumar
3.Pirabhu

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order of the District Munsif, Harur dated 03.12.2011 made in I.A.No.958 of 2011 in O.S.No.156 of 2009.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.S.Kanniah

ORDER

The submissions made by Mr.V.Raghavachari, learned counsel for the petitioners and by Mr.S.Kanniah, learned counsel for the respondents are heard. The impugned order and the materials produced in the form of typed set of papers are also perused.

2. This revision arises out of an order of the trial court dismissing an application filed under Section 10 of the Code of Civil Procedure for stay of the suit pending disposal of the second appeal in S.A.No.309/2010 on the file of this court.

3. The revision petitioners are the defendants and the plaintiffs in the suit are the respondents herein. The suit is one for permanent injunction not to prevent them from using the easementary right they claimed over the property of the revision petitioners for the beneficial enjoyment of the property of the respondents herein. Contending that the father of the respondents herein had filed an earlier suit for the very same relief in respect of the very same property and the said suit was originally dismissed by the trial court, but decreed by the appellate court and is pending before this court in S.A.No.309/2010, the petitioners wanted the trial of the later suit, namely O.S.No.156 of 2009 filed by the sons of Palani to be stayed under Section 10 of the Code of Civil Procedure.

4. The petition was resisted by the respondents herein, who are the sons of Palani, contending that the dominant tenement regarding which their father claimed easementary right and the dominant tenement regarding which they claim easementary right are different and that therefore, the present suit cannot be said to be a suit between the parties to the earlier suit or persons claiming under the parties to the earlier suit and that as such Section 10 of the Code of Civil Procedure shall not get attracted.

5. In this regard, it is pointed out by the learned counsel for the respondents that the copies of plaint, written statement, judgment of the trial court and judgment of the appellate court in the former suit were not produced by the revisions petitioners, who sought stay of the subsequent suit under Section 10 of the Code of Civil Procedure.

6. The learned counsel for the petitioners would admit that the said documents were not produced before the trial court, but would contend that since copies of the said documents have been produced in the form of typed set of papers before this court in the civil revision petition, the order of the trial court, which is impugned in this revision, can be tested with reference to the copies of the documents that are produced in the typed set of papers. Having not chosen to produce the necessary documents for taking an effective decision in the trial court as

to whether to grant a stay under Section 10 of the Civil Procedure Code or not, the petitioners cannot try to supplement the materials by producing the copies of the documents relating to the prior suit in the revision. However this court is of the view that instead of dismissing the revision, it can be allowed and the order of the trial court dismissing I.A.No.958/2011 can be set aside and the I.A. can be remitted back to the trial court for fresh disposal after giving opportunity to the petitioners to produce the documents referred to above and that in doing so, the interest of justice can be sub-served.

Accordingly, the civil revision petition is allowed in part. The impugned order of the learned District Munsif, Harur dated 03.12.2011 made in I.A.No.958 of 2011 in O.S.No.156 of 2009 is set aside. I.A.No.958 of 2011 is remitted back to the trial court for fresh disposal after giving an opportunity to the petitioners to produce the documents relating to the former suit. No costs. Consequently, the connected M.P.No.1 of 2012 is closed.

24.03.2015

Index : Yes/No
Internet : Yes/No
asr

To
The District Munsif, Harur

P.R.SHIVAKUMAR, J.

asr/-

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