



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P (MD) No.1972 of 2014

and

M.P (MD) No.1 of 2014

K.M.Ravichandran .. Petitioner/Petitioner/2nd Defendant

Vs.

1.S.Nalayini ..1st Respondent/1st Respondent/Plaintiff

2.Sri Ramachandran Mission
Babuji Memorial Ashram,
Manappakkam, Chennai,
Rep.byt is President Parthasarathi
Rajagopalachari,
S/o.C.A.Rajagopalachari,
Gayathri -19, North Street,
Sriram Nagar, Chennai,
through his power agent,
A.P.Durai.

3.Balan

4.Ganeshkumar

5.Muneeswaran

6.Gandhimathidevi

7.Ganesh

8.Sivasubiramanian

9.MurugesanRespondents 3 to 9/Respondents 2 to 8/
Defendants 3 to

9.

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 02.07.2014 in I.A.No.199(a) of 2014 in O.S.No.585 of 2008 on the file of the Principal District Munsif Court, Karur and to set aside the same.

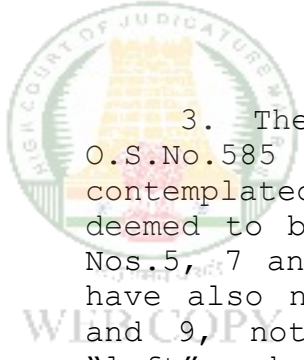
For Petitioner : Mr.R.Subramanian

For Respondents : No Appearance

ORDER

Challenge in this Revision Petition has been made to the fair and decreetal order, dated 02.07.2014 made in interlocutory application in I.A.No.199(a) of 2014 in O.S.No.585 of 2008 on the file of the District Munsif Court, Karur.

2. Heard Mr.Subramanian, learned counsel appearing for the revision petitioner.
<https://hcservices.ecourts.gov.in/hcservices/>



3. The first respondent, who is the plaintiff in the suit in O.S.No.585 of 2009 has refused to claim the notice. Hence, as contemplated under Section 27 of the General Clauses Act, service is deemed to be sufficient and she is called absent. Except the respondent Nos.5, 7 and 9, others have been served with the notice. However, they have also not chosen to appear. In respect of the respondent Nos.5, 7 and 9, notices were returned with an endorsements "addressee left", "left" and "No such addressee". Since, the first respondent, who is the plaintiff in the suit has unclaimed the notice, notice to the respondent Nos.5, 7 and 9 are dispensed with.

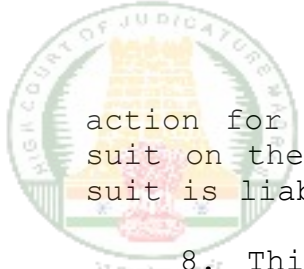
4. It is manifest from the records that the first respondent has filed the above said suit in O.S.No.585 of 2008 against the revision petitioner as well as against the remaining respondents seeking the relief of perpetual injunction. The prayer portion is extracted as under:

"a. granting a decree for the relief of permanent injunction restraining the defendants, their men, agents or servants or anyone on their behalf from in any way interfering with the plaintiff's possession and enjoyment of the suit A schedule properties by quarrying jally, aralai, solanki etc., by way of putting up construction in the suit B schedule properties."

5. During the pendency of the said suit, the petitioner being the second defendant as well as the defendants 3 and 4 have filed their respective written statements. However, this petitioner, being the second defendant has taken out an application in I.A.No.199(a) of 2014 under Order 7 Rule 11 of C.P.C, to dismiss the above suit as the plaintiff had lost the suable interest and the same has become infructuous.

6. This petition was contested by the first respondent before the trial Court. After hearing both sides, the learned Principal District Munsif, Karur, has proceeded to dismiss that application on the ground that though the period of licence granted in favour of the first respondent/plaintiff was expired on 07.04.2013, since she had filed an application before the concerned authority for renewing the licence and the procedures are still pending, he did not find any reason to allow that application and only on the said ground, the said application was dismissed.

7. Now what the learned counsel has adverted to is that as pointed out in paragraph No.6 of the plaint, the licence was granted in favour of the first respondent/plaintiff for quarrying on 08.04.2008 ie., for a period of five years. According to the learned counsel for the petitioner, the period of five years was expired on 07.04.2013 itself. Thereafter, the possession in respect of disputed quarry in respect of the first respondent/plaintiff is litigious possession and therefore, she does not have any right to continue quarrying even after expiry of the licence period of five years i.e on 07.04.2013. Only on this sole ground, the said application under Order 7 Rule 11 of C.P.C., was filed. He has also made stress on the point that pendency of the application on the file of the concerned authority for renewal of licence and continuation of proceedings thereon would not give any new cause of



action for renewal and the same could not be a reason to maintain the suit on the file of the trial Court and therefore, on that ground, the suit is liable to be dismissed as infructuous.

8. This Court has considered the submissions made by the learned counsel appearing for the petitioner/second defendant and perused the averments of plaint as well as the averments made in the affidavit filed in support of the petition along with the impugned order.

9. This Court finds that the impugned order itself is not maintainable and seems to be perverse in nature and hence, the same is liable to be set aside.

10. Accordingly, this Civil Revision Petition is allowed and the impugned order, dated 02.07.2014 made in I.A.No.199(a) of 2014 in O.S.No.585 of 2008 on the file of the Principal District Munsif Court, Karur, is set aside and the petition in I.A.No.199(a) of 2014, is allowed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.side)

/True copy/

Sub AssistantRegistrar

To

The Principal District Munsif Court,
Karur

+1cc to M/s.R.Subramanian, Advocate SR.No.15554

sh:sks-rr:11.2.2016:3P/3c

C.R.P (MD) No.1972 of 2014
18.12.2015