

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.12.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.1906 of 2014

1.Pandarinathan
2.Jayabalan

: Petitioners

versus

1.S.Rajalakshmi
2.Anbalagan
3.Madhavan

: Respondents

PRAYER: Revision filed against the order dated 3.4.2014, in I.A.No.15636 of 2013 in O.S.No.6027 of 2009 on the file of the II Assistant, City Civil Court, Chennai.

For petitioners :: Mr.N.Nagu Sah

For respondents :: No appearance

ORDER

The first respondent filed a civil suit in O.S.No.6027 of 2009 before the II Assistant Judge, City Civil Court, Chennai, praying for a decree of mandatory injunction and permanent injunction. The first petitioner filed written statement and contested the suit.

2. The first petitioner filed an application in I.A.No.15636 of 2013 under Order 7 Rule 11 CPC, to reject the plaint in O.S.No.6027 of 2009. The learned Trial Judge dismissed the application, by order dated 3 April 2014, on the ground that the matter requires evidence. The said order is under challenge in this civil revision petition.

3. The learned counsel for the petitioners contended that the first respondent in the plaint contended that the first petitioner is a trespasser. In view of the said contention, the 1st respondent ought to have filed a suit for possession by paying necessary court fee under Section 30 of the Tamil Nadu Court Fees and Suit Valuation Act and not a suit for mandatory injunction. According to the learned counsel, there is a statement in the plaint that the first petitioner trespassed into the property in the year 1995. Therefore, the suit filed in the year 2000 was barred by limitation. The learned counsel contended that none of the grounds taken by the petitioners in the application filed under order 7 Rule 11 CPC were considered properly by the Trial Court.

4. None appeared on behalf of the respondents.

5. The 1st respondent filed the suit in O.S.No.6027 of 2009 against

the petitioners praying for a decree of mandatory injunction. The first petitioner filed a detailed written statement indicating the earlier proceedings as well as the pending proceedings in respect of the suit property.

6. The first petitioner in the affidavit filed in support of the interlocutory injunction in I.A.No.15636 of 2013 contended that the suit is barred by limitation. Similarly, the suit is bound to fail on account of the incorrect prayer made for mandatory injunction. According to the first petitioner, instead of filing a suit for possession by paying Court fee under Section 30 of the Tamil Nadu Court Fees and Suit Valuation Act, the 1st respondent has filed a suit for mandatory injunction and permanent injunction.

7. The question of limitation is a mixed question of law and fact. It is not possible to reject the plaint only on the ground of limitation. The petitioners contended that even according to the respondents, cause of action commenced from 30 March 1995 and as such, the suit filed in 2009 is not maintainable.

8. The cause of action paragraph of the plaint proceeds as if the first

petitioner fabricated the settlement deed on 30 March 1995. However, that does not mean that the first respondent trespassed into the property on 30 March 1995 and as such, the suit filed after fourteen years is barred by limitation. As stated earlier, the question of limitation is a mixed question of law and facts and it has to be considered during the course of trial. There is no question of rejecting the plaint on that ground.

9. The petitioners have taken another contention with regard to possession. The respondent wanted a decree of mandatory injunction. According to the petitioners, the proper prayer is a suit for possession. In case the Trial Court is of the view that the first respondent is not entitled to a decree of mandatory injunction, the suit would be dismissed. Merely because the respondent has made a wrong prayer, the suit cannot be axed at the threshold. It is a matter for evidence and judicial determination on consideration of pleadings and evidence.

10. The learned Trial Judge has given sufficient reasons justifying the order dated 3 April 2014 in I.A.No.15636 of 2013. It is not for this Court to sit in appeal over the order passed by the learned Trial Judge by substituting its own reasons, by exercising the revisional jurisdiction under Article 227 of the Constitution of India. I am therefore of the view that there is no reason to upset the order passed by the Trial Court.

11. In the upshot, I dismiss the civil revision petition. No costs.
Consequently, M.P.No.1 of 2014 is closed.

02.12.2016

Index:Yes/no
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To
The II Assistant, City Civil Court, Chennai.

K.K.SASIDHARAN, J.

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