

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.2138 of 2014
and
M.P.No.1 of 2014

1.M.J.Ramakrishnan
2.M.R.Nandini
3.M.R.Sukanya
4.M.R.Priya
5.M.R.Aarthi Poorna

... Petitioners

VS

1.P.Mahavir Raj Chaudhari
2.Mukesh Kumar Chaudhari
3.M/s.Hope Foundations P. Ltd.,
No.4/7, Aravamudha Garden Street,
Egmore, Chennai - 600 008.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 20.03.2014 made in I.A.No.11665 of 2013 in O.S.No.3592 of 2010 on the file of the learned XVIII Assistant City Civil Court, Chennai.

For Petitioners : Mr.P.Sudalaiyandi

ORDER

This revision arises against the order of learned XVIII Assistant City Civil Court, Chennai, passed in I.A.No.11665 of 2013 in O.S.No.3592 of 2010 on 20.03.2014.

2. Respondents 1 and 2 are plaintiffs in O.S.No.3592 of 2010, an action seeking injunction. Petitioners/defendants moved I.A.No.11665 of 2013 under Or.VII R.11 CPC to reject the plaint. The Court below, under the impugned order, dismissed such application. Hence, this revision.

3. Heard learned counsel for petitioners.

4. In dismissing the application, the Court below has reasoned thus:

“On perusal of plaint it is found that the respondents/plaintiffs in para 19 of the plaint have stated the cause of action and whether the cause of action as narrated by the respondents/plaintiffs is proved or not is an issue to be decided after full fledged trial and hence this court finds that the contention of the petitioners that the plaint does not disclose cause of action is unsustainable one. Regarding the 2nd contention of the petitioners that the respondents/plaintiffs have not sought for declaration of title and therefore the suit itself is not maintainable is also an issue to be decided after full

fledged trial and the same does not falls within the ambit of Order 7 Rule 11 of CPC.

Regarding the 3rd contention of the petitioners that the suit has not been properly valued and the payment of court fees is improper one concerned, this court on perusal of case records finds that the respondents/plaintiffs claim that they have right to use parking area on the southern side of the suit property and whereas as the petitioners cause obstructions by attempting to put up construction in the parking area and therefore the plaintiffs prays for the relief of permanent prohibitory injunction and declaration. The permanent prohibitory injunction has been sought restraining the petitioners/defendants from causing obstruction and declaration is sought regarding the structures alleged to have been put by the petitioners/defendants and therefore on considering the relief as prayed by the respondents/plaintiffs not being one for declaration of title, this court at present finds that the valuation of suit by the respondents/plaintiffs for the reliefs as prayed in the suit under section 27(c) and 25(d) of Tamil Nadu Court Fees and Suits Valuation Act is proper. Thus the petitioners have not made out any case to reject the plaint and hence this court is inclined to dismiss this petition.”

This Court finds no error in the order under challenge.

5. The only submission of learned counsel for petitioners which merits consideration is that prayer 'b' in the suit seeking a declaration that the

temporary structure in the form of iron rod put up at the southern parking area as illegal and unauthorised and to pull down the same, has wrongly been worded. In real terms, the relief sought would be one for mandatory injunction directing removal of the structure. When so constructed, the Court fee payable would fall u/s. 27 (c) of the Tamil Nadu Court Fees Act.

In the said circumstances, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.06.2016

Index:yes/no
Internet:yes
gm

To

The XVIII Assistant City Civil Court,
Chennai.

C.T.SELVAM, J

gm

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