

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.2822 of 2014

&

M.P.No.1 of 2014

1. T.I.Royappa

2. T.I.Irudayaraj

... Petitioners

vs.

1. A/M.Asala Guru Panithappu Subramania
Swamigal Mutt,
Neelamangalam Village, Maduranthagam Taluk,
Rep by its Executive Officer,
A/M Kothadandaramasamy Temple,
Maduranthagam Taluk, Kancheepuram District

2. A.N.Sivarama Brahman

3. A.N.Hariprasanth

4. A.N.Veerasingam

5. Dilip Nensey Bhatia

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 05.03.2014 passed by the learned District Munsif Judge, Maduranthagam, Kancheepuram District, dismissing I.A.No.2142 of 2011 in O.S.No.3 of 2008.

For Petitioners : Mr.N.Nagu Sah
For Respondents 2 to 4 : Mr.R.Selvakumar
For Respondent 5 : Mr.K.Bijaisundar

ORDER

The defendants 5 and 6 in O.S.No.3 of 2008 pending on the file of the District Munsif, Maduranthagam are the petitioners in the Civil Revision Petition. The first respondent in the Civil Revision Petition is the plaintiff in the above said suit. The suit was filed for a declaration of title in respect of the suit properties which are shown as items 1 to 24 in the plaint schedule and for a permanent injunction not to interfere with the alleged peaceful possession and enjoyment of the first respondent / plaintiff in respect of the suit properties. The revision petitioners /defendants 5 and 6 claim to have purchased items 1 and 2 of the suit properties from the 5th respondent herein / 4th defendant.

2. The revision petitioners / defendants 5 and 6 contending that the first respondent / plaintiff chose to include plaint items 4 to 24 in the plaint schedule with a view to bring the suit before the District Munsif Court, Maduranthagam within whose territorial jurisdiction the said properties situate; that in respect of the said items, there is no dispute regarding the title of the first respondent / plaintiff and no

attempt to interfere with the possession has also been made by any of the defendants; that only in respect of items 1 to 3 situated outside the territorial jurisdiction of the District Munsif, Maduranthagam the first respondent has got the cause of action to file the suit for declaration of title and other reliefs and that hence, the issue regarding jurisdiction shall be decided as a preliminary issue. For that purpose, the revision petitioners filed the application I.A.No.2142 of 2011.

3. The learned trial Judge, after hearing, though concurred with the contention raised by the revision petitioners that there is no dispute regarding suit items 4 to 24, which alone are within the jurisdiction of the trial Court, namely the Court of the District Munsif, Maduranthagam, declined to try the issue regarding jurisdiction as a preliminary issue. Accordingly, the learned trial Judge dismissed the said application by the impugned order dated 05.03.2014. It is as against the said order, the present Civil Revision Petition has been filed.

4. Though the first respondent has been served with notice privately with the permission of this Court and the name of the first

respondent finds a place in the cause list, the first respondent has not chosen to enter appearance either in person or through counsel to oppose the revision. The other respondents, who have entered appearance through counsel, do not have any objection for allowing the prayer made in the Civil Revision Petition. Hence, this Court deems it appropriate to pass an order after hearing the submissions to be made on behalf of the revision petitioners/defendants 5 and 6.

5. Upon hearing the submissions made by Mr.N.Nagu Sah, learned counsel for the revision petitioners and after perusing the certified copy of the impugned order and also the copies of the connected papers produced in the form of typed set of papers, this Court is of the considered view that the learned trial Judge has committed an error in not exercising the jurisdiction conferred on him to decide a question of jurisdiction as a preliminary issue.

6. It is submitted on behalf of the petitioners and on behalf of the the respondents 2 to 5, who are represented by counsel, that the trial of the suit is yet to be commenced and that hence, there was no impediment for the trial Court to try the issue of jurisdiction as a preliminary issue. Since the question of jurisdiction goes to the root of

the matter, it shall be just and necessary to decide the same as a preliminary issue. The objection regarding jurisdiction was raised admittedly at the earliest opportunity and hence, this Court comes to the conclusion that the revision shall succeed.

7. Accordingly, the civil revision petition is allowed. The order of the trial Court dated 05.03.2014 made in I.A.No.2142 of 2011 is set aside. I.A.No.2142 of 2011 shall stand allowed. The trial Court shall decide the issue regarding jurisdiction as a preliminary issue. No costs. Consequently, the connected miscellaneous petition are closed.

13.04.2016

Index: Yes/No
Internet: yes/No

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To

The Munsif Judge, Maduranthagam,
Kancheepuram District

P.R.SHIVAKUMAR.J

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