

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No.4838 of 2014

and

C.M.P.No.1 of 2014

1.M.K.Basha
2.B.Khadar Sha
3.Shahen Sha
4.Hussain @ Husain Sha
5.Badh Sha
6.Barkath Sha
7.Abu Sha

... Petitioners

vs.

1.Abdul Rahib
2.Abdul Kareem
3.Nowsath
4.Chan Basha
5.Thavila Sha
6.Ayisha Bi
Respondents

...

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 17.11.2014 made in I.A.No.505 of 2014 in O.S.No.252 of 2013 on the file of the District Munsif Court, Krishnagiri.

For petitioners : Mr.P.M.Duraiswamy

For respondents: Mr.P.Mani

ORDER

The petitioners filed an Interlocutory Application, before the District Munsif, Krishnagiri, in I.A.No.505 of 2014 in O.S.No.252 of 2013 under section 10 of CPC, to stay the suit on the ground that the Second Appeal in S.A.No.1221 of 2013 is pending before the High Court. The application was dismissed by the Trial Court. The said order is under challenge in this Civil Revision Petition.

2. The learned counsel for the petitioners contended that the petitioners earlier filed a suit for bare injunction. The suit was dismissed by the Trial Court and the decree was affirmed in first Appeal. The related Appeal is pending in Second Appeal. Since similar issue was raised in the earlier suit and the Second Appeal is pending, the present suit has to be stayed till the disposal of the Second Appeal in S.A.No.1221 of 2013.

3. The petitioners filed a suit for injunction, originally, in O.S.No.266 of 2010 before the District Munsif, Krishnagiri. The suit was dismissed by the Trial Court. The decree was upheld by the first appellate Court in A.S.No.10 of 2012. Thereafter, the petitioners filed a Second Appeal in S.A.No.1221 of 2013. There is nothing on record to indicate that the petitioners were given interim

relief by the first appellate Court during the currency of the appeal or by this Court in the pending Second Appeal in S.A.No.1221 of 2013.

4. The Trial Court in the earlier round of litigation made an observation that the petitioners are not entitled to the injunction as prayed for in the Civil Suit. That does not mean that the respondents are not entitled to maintain a separate suit for injunction to protect their interest in the suit property. I am, therefore, of the view that the Trial Court was correct in dismissing the Application in I.A.No.505 of 2014 in O.S.No.252 of 2013 filed by the petitioners under Section 10 of CPC.

5. The Civil Revision Petition is dismissed. No costs.
Connected Miscellaneous Petition is closed.

Index : yes / no
Internet :yes / no
asvm

30.11.2016

Copy to:

The District Munsif,
Krishnagiri.

K.K.SASIDHARAN, J

(asvm)

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