

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.4861 of 2014

and

M.P.No.1 of 2014

1. R.Soundarraaj
2. R.Gangadharan
3. R.Narayanan
4. R.Selvaraj

... Petitioners

Vs

1. Sampath
2. S.Lakshmi
3. The Estate Officer-II,
Tamilnadu Slum Clearance Board,
Vysarpadi, Chennai 600 039
4. Renuka
5. R.Kumar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 10.09.2014 passed in I.A.No.1491 of 2013 in O.S.No.4606 of 2013 by the Hon'ble I Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.L.Dhamodaran

For Respondents 1 & 2 : Mr.N.Karthikeyan

For Respondents 3 to 5 : No Appearance

ORDER

Notice on respondents 3 to 5 has not been served through Court. However, private notice on respondents 3 and 5 came to be served. They are not present and they are not represented by counsel. Though private notice sent to the fourth respondent, has been returned with an endorsement 'no such person', learned counsel for the petitioner submits that respondents 3 to 5 do not have any interest in the outcome of the Civil Revision Petition, since the prayer made by the petitioners is for revocation of the plaint. The said submission is recorded.

2. The arguments advanced by Mr.L.Dhamodaran, learned counsel for the petitioners and by Mr.T.S.Rajamohan, learned counsel for the respondents 1 and 2 / plaintiffs are heard.

3. It is the contention of the learned counsel for the petitioners that the suit is barred by Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, whereas according to the submission made by the learned counsel for the respondents 1 and 2, the suit might have been barred by the said provision in so far as the prayer for mandatory injunction against the first defendant, but the suit in respect of the injunction sought for

against the private respondents shall be very much maintainable. Learned counsel for the respondents, besides relying on Section 65, refers to Section 29 of the said Act to contend that even in respect of the first prayer, namely, permanent injunction against the private respondents, the suit is barred by the statute.

4. A reading of Section 29 will make it clear that the bar provided under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 does not extend to the filing of the suit for injunction against third parties, who are not in possession and who try to encroach upon and try to trespass into and disturb the possession of the plaintiffs. The bar provided under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 is to the effect that the persons who are in occupation of the property cannot be evicted without the previous permission of the prescribed authority in writing. Here is a case, in which, the respondents 1 and 2 have filed the suit for protecting their alleged possession as against the private respondents.

5. So far as the bar provided under 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 is concerned, it

extends to the matters which the Government or the prescribed authority is empowered by or under the Act to determine. The Government or the prescribed authority is not empowered to decide whether a person is entitled to injunction against the private respondents or not. No direct provision in the Act is pointed out to show that either the Government or the prescribed authority is empowered to decide the question of protecting the person in occupation from the attempted trespass by others.

6. So far as the prayer for mandatory injunction is concerned, learned counsel for the respondents 1 and 2 /plaintiffs concedes that the same is not maintainable as it is barred by Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 and that the respondents 1 and 2/plaintiffs cannot be permitted to file a suit drafting the plaint in such an ingenious way to incorporate a prayer, which is barred by statute, along with another prayer which is not barred by statute. Hence, the learned counsel for the respondents 1 and 2 submits that they are prepared to give up the second prayer for mandatory injunction sought for against the first defendant, who is the third respondent, in the revision.

7. The said submission is hereby recorded and the second prayer for mandatory injunction against the third respondent herein / first defendant shall stand given up. So far as the other prayer, namely, permanent injunction is concerned, the prayer for rejection of the plaint has to fail, that too, in view of the fact that the respondents have now come forward to give up the relief sought for in the second prayer.

8. In view of the same, the Civil Revision Petition is disposed of, on the following terms.

i. The petition for rejection of plaint shall stand dismissed since the second prayer for mandatory injunction against the third respondent / first defendant is given up by the respondents 1 and 2 herein / Plaintiffs.

ii. The learned trial Judge shall expedite the trial and dispose of the same expeditiously without granting unnecessary adjournments.

Interim stay already granted shall stand vacated and M.P.No.1 of 2014 in C.R.P.No.4861 of 2014 is dismissed. No costs.

04.03.2016

Index: Yes/No
Internet: yes/No
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P.R.SHIVAKUMAR, J

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To

The I Assistant Judge, City Civil Court, Chennai.

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