

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.2599 of 2015

Dr.K.Balasundaram

.. Petitioner

vs.

K.Narayanasamy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and decree dated 18.12.2014 made in A.S.No.47 of 2014 on the file of the III Additional Sub Judge, Coimbatore, reversing the Judgment and decree in O.S.No.868 of 2013 dated 18.03.2014 on the file of the Principal District Munsif, Coimbatore.

For Petitioner : Mr.V.Lakshminaraynaa

For Respondent : Mr.T.M.Hariharan

ORDER

This revision arises out of an order of the lower Appellate Court dated 18.12.2014 made in A.S.No.47 of 2014 on the file of the III Additional Sub Judge, Coimbatore, reversing the Judgment and decree in O.S.No.868 of 2013 dated 18.03.2014 on the file of the Principal District Munsif, Coimbatore.

2. The sole defendant in O.S.No.869 of 2013 instituted on the file of the Principal District Munsif, Coimbatore, is the petitioner in the present revision. The respondent herein filed the above said suit for a declaration that he had perfected title by adverse possession in respect of the suit property and for a consequential permanent injunction. The revision petitioner/defendant filed an application in I.A.No.1813 of 2013 under Order 7 Rule 11 Code of Civil Procedure, praying for the rejection of the plaint on the ground that there was no cause of action for filing such a suit and the averments made in the plaint did not reveal such a cause of action. The learned trial Judge, after hearing, accepted the contention of the defendant, allowed the said application and rejected the plaint by order dated 18.03.2014. As against the said order rejecting the plaint, the respondent herein/plaintiff, preferred an appeal before the lower Appellate Court and the learned III Additional Subordinate Judge, Coimbatore, disposed of the said appeal numbered as A.S.No.47 of 2014 by the impugned Judgement and decree dated 18.12.2014.

3. In the normal course, as against the appellate decree, a second appeal could have been filed. Since the learned lower Appellate Judge neither allowed the application for rejection of plaint, nor dismissed the same and on the other hand simply permitted the plaintiff to file

necessary application for striking out the relief of declaration and consequential injunction, the defendant/revision petitioner has chosen to challenge the same by invoking the power of superintendence of this Court under Article 227 of the Constitution of India.

4. The respondent has entered appearance after notice before admission and he is represented by a counsel. The arguments advanced on both sides are heard. The available materials are also perused.

5. The issue involved in this revision is a covered one. The Hon'ble Supreme Court in **Gurdwara Sahib vs. Gram Panchayat Village, Sirthala and another reported in (2014) 1 Supreme Court Cases 669** has held that a person claiming to be in adverse possession can use it only as a shield and cannot use it as a weapon by filing a suit for declaration that he has perfected title by adverse possession. The relevant observation made by the Hon'ble Supreme Court in the above said case is reproduced hereunder:-

“8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence”.

6. A learned Single Judge of this Court, while dealing with a similar question in **R.Riyaz Ahmed and others vs. J.G.Glass Industries Pvt. Ltd., reported in 2014-2-LW-455**, after referring to various Judgments of the Hon'ble Supreme Court and the High Courts, including the Judgment of the Hon'ble Supreme Court in **Gurdwara Sahib's** case, held that the law enunciated by the Hon'ble Supreme Court in **Gurdwara Sahib's** case would apply to all cases of suits filed by a person claiming to be in adverse possession for a declaration that he has perfected title by adverse possession. The relevant portion in the order of the learned Single Judge is found in paragraph No.17, which is extracted hereunder:-

“17. There is no dispute with regard to the ratios laid down in the judgments relied upon by the learned counsel for the appellants. However, since the facts and circumstances are different, the principles laid down in those judgments are not applicable to the present case”.

7. A consideration of the above said observations made by the Hon'ble Supreme Court and by this Court, following the decision of the Hon'ble Supreme Court, will make it clear that a suit for declaration of title based on adverse possession and a consequential injunction cannot be maintained and that the cause of action for making such a claim will not arise till a suit for possession or ejectment is filed by the real owner. So far as the relief of injunction is concerned, since it has not been

sought for as an independent relief and it has been sought for as a consequential relief, the suit as a whole becomes not maintainable. The learned lower Appellate Judge having accepted the contention of the defendant, ought not to have ventured to give a leverage to the plaintiff to approach the trial Court for amending the plaint to strike out the prayer for declaration and consequential injunction, when the plaint itself is liable to be rejected. There shall be no justification in of permitting the plaintiff to amend the plaint so as to make the suit maintainable. In this regard, the approach made by the learned lower Appellate Judge is not only improper but also shows illegal exercise of jurisdiction conferred on it.

8. For all the reasons stated above, this Court comes to the conclusion that the revision petition shall succeed, the order of the lower Appellate Court incorporated in its Judgement and decree dated 18.12.2014 made in A.S.No.47 of 2014 on the file of the III Additional Sub Judge, Coimbatore is liable to be set aside and accordingly the same is set aside with the result that the Judgment and decree of the trial Court in I.A.No.1813 of 2013 O.S.No.868 of 2013 dated 18.03.2014 on the file of the Principal District Munsif, Coimbatore shall stand restored. By way of clarification, it is made clear that the order of the rejection of the

plaint will not be an impediment for the respondent/plaintiff to file a fresh suit, showing the proper cause of action. No costs

13.04.2016

Index: Yes/
Internet: yes/
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To

1. The III Additional Sub Judge, Coimbatore,
2. The Principal District Munsif, Coimbatore.

P.R.SHIVAKUMAR.J.,
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