

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4144 of 2015

and

M.P.No.1 of 2015

1.V.Jayalakshmi

2.S.Vellingiri

.. Petitioners

Vs

1.Ashokan

2.M/s.Sri Selvaganapathy Engineering Works,
Rep. by Selvaraj
Office at Kottur Road,
Sureswaranapatti, Pollachi
Coimbatore District.

3.M/s.Sri Krishna Auto Services,
Rep. by Manikanda
Office at Kottur Road,
Sureshwaranpatti, Pollachi,
Coimbatore District.

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.10.2014 made in I.A.No.145 of 2014 in O.S.No.615 of 2012 on the file of the First Additional District Judge, Coimbatore.

For Petitioners : Mr.S.Vinoth Kumar

For Respondents : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

ORDER

The Civil Revision Petition is filed against the order dated 17.10.2014 made in I.A.No.145 of 2014 in O.S.No.615 of 2012 on the file of the First Additional District Judge, Coimbatore.

2.The first respondent as a plaintiff filed a suit for recovery of possession and mandatory injunction restraining the defendant to make any alteration in physical features. The defendants filed a written statement and contested the suit. During the pendency, the defendants filed an application under Order VII Rule 11 of CPC stating that there is no cause of action for filing of the suit. The Trial Court after hearing both sides, has dismissed the application. Against which, the present Civil Revision Petition has been preferred.

3.Learned counsel for the petitioners submitted that there is no cause of action for filing of the suit because originally the mother of the first respondent filed a suit in O.S.No.384 of 2009 for injunction wherein she has stated that she is in possession and enjoyment of the suit property. During the pendency of the

suit, Advocate Commissioner was appointed, he inspected the property and filed a report stating that the defendants 3 and 4, namely, respondents 2 and 3 herein were in possession and enjoyment of the same as tenants under defendants 1 and 2. Immediately, she withdrew the suit and executed a settlement deed in faovur of the respondent/plaintiff and in turn, the first respondent/plaintiff filed a suit for recovery of possession and so, there is no cause of action. That factum was not considered by the Trial Court. Hence, he prayed for setting aside the impugned order passed by the Trial Court.

4. Resisting the same, the learned counsel for the respondents submitted that the property is a self acquired property of the father of the first respondent/plaintiff. He died intestate leaving behind the first respondent, his brother, sister and mother. All of them jointly executed a release deed in faovur of their mother, viz., Mariammal @ Pappu. She filed a suit and subsequently she withdrew the same and executed a settlement deed in favour of the first respondent/plaintiff. The first respondent/plaintiff is the owner of the suit property and the property is in the hands of the third party. Hence, he filed a suit for recovery of possession and so, the cause of action has been clearly mentioned. That factum was rightly considered by the Trial Court. He further submitted that the cause of action is not a single event and it is bundle of facts that can be decided only at that time of trial. The Trial Court has

considered all the aspects in proper perspective and dismissed the application. Hence he prayed for dismissal of the Civil Revision Petition.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The mother of the first respondent filed a suit in O.S.No.384 of 2009 on the file of the District Munsif Court, Pollachi for bare injunction stating that the property has been purchased by her husband on 19.05.1995 and he is in possession and enjoyment of the same. He died intestate on 05.11.2004 leaving behind his wife and children. All of them jointly executed a release deed in favour of the mother Mariammal @ Pappu and she is in possession and enjoyment of the same. When her co-sister attempted to interfere her possession, she filed a suit for bare injunction. It is admitted fact that during the pendency of the suit, Advocate Commissioner was appointed, he inspected the property and filed a report, in which it was stated that the defendants 3 and 4 in that suit were in possession and enjoyment of the suit property. Immediately she withdrew the suit and executed a settlement deed in favour of the first respondent/plaintiff and in turn, the first respondent/plaintiff filed a suit for recovery of possession. The suit is based on the sale deed dated 19.05.1995 and also the release deed executed in favour of the mother on

03.02.2006 and in turn, the mother executed a settlement deed in favour of the respondent/plaintiff on 21.10.2010. Further, on perusal of the documents and also paragraph No.12 of the plaint, cause of action has been clearly mentioned.

7.It is well settled dictum of the Apex Court that the cause of action is not a single event and it is a bundle of facts that can be decided only at the time of trial. So, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Furthermore, it is well settled dictum that while dealing with the application under Order VII Rule 11 of CPC for rejection of the plaint, only the plaint averments in the plaint and documents filed by the plaintiff has been looked into and neither the written statement nor the documents filed by the defendant shall be looked into.

8.Considering the averments in the plaint that there is cause of action for filing of the suit and the Trial Court has considered various decisions of this Court and the Apex Court and came to the correct conclusion, I do not find any reason to interfere with the finding of the Trial Court and the same is hereby confirmed. Consequently, the Civil Revision Petition deserves to be dismissed.

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

05.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The First Additional District Judge, Coimbatore.

R.MALA. J.,

cse

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