

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.06.2018

Pronounced on : 24.04.2019

CORAM

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

CRP.(PD).No.4735 of 2017

and

M.P.No.22293 of 2017

1. Samsudeen

2. Megarajdeen

..Petitioners/Defendants

versus

R.Jayaraman

.. Respondent/Plaintiff

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 22.11.2017 made in I.A.No.506 of 2017 in O.S.No.70 of 2017 on the file of the learned Additional District Munsif Court, Chidambaram.

For Petitioners : Mr. N.A.Nissar Ahmed

For Respondent : Mr.R.Thanjan - No appearance

ORDER

This Civil Revision has been filed to set aside the fair and

decreetal order dated 22.11.2017 made in I.A.No.506 of 2017 in O.S.No.70 of 2017 on the file of the learned Additional District Munsif, Court, Chidambaram.

2. The respondent herein filed the suit against the revision petitioners in O.S.No.70 of 2017 before the learned Additional District Munsif, Chidambaram for declaration declaring that the respondent/plaintiff is having the right of lease by virtue of registered Lease Deed dated 16.09.2016, registered as document No.1598 of 2015, SRO, Parangipettai for the suit scheduled property and for a permanent injunction restraining the revision petitioners/defendants, their men, agent, servants claiming through them and representatives from in any manner interfering the peaceful possession and enjoyment of the suit scheduled property.

3. The case of the respondent/plaintiff is that the suit schedule property belongs to private trust and Wakf Board is no way connected with the suit property. The suit property originally belonged to one Ameen Thaikal Trust, a private trust represented and owned by one Syedsha Musana Sahib @ C.S.Meeran Sahib and thereafter, his son, viz., Syed Sirudeen Hussain @ syed Hussain Basha to execute a

general power of attorney on 24.08.2015 vide document No.1433 of 2015, SRO, Parangipettai to one K. Selvapriya, Wife of T. Venkatesaperumal before migrating to abroad. The said power agent Mrs.K.Selvapriya executed a deed of lease dated 10.09.2015 registered as document No.1598 of 2015, SRO, Parangipettai for a period of 98 years for a consideration of Rs.20,00,000/- and an advance of Rs.5,00,000/- and handed over the possession of these lands to the lessee to the plaintiff herein. Since then the respondent is in possession and enjoyment of these leasehold lands as a lawful lessee. One Mohammed Hussain, since deceased admitted to interfere with the petitioner's peaceful possession and enjoyment of the suit scheduled property on 09.10.2015 for which the respondent/plaintiff has lodged a complaint before the Inspector of Police, Killai Police Station, but advised the respondent to seek remedy through the Court of law. Therefore, the respondent filed a writ petition in W.P. No.38591 of 2015 before this Court and got an order for police protection on 03.12.2015. Subsequently, nobody interfered with the possession and enjoyment of the respondent.

4. After the death of the said Mohammed Hussain, his two sons the defendants 1 and 2 in the suit, in collusion with the

petitioners herein instigated the Tamil Nadu Wakf board, particularly the fifth defendant in the suit to snatch the aforesaid Trust land. The defendants 1 to 3 and 5 in the suit have jointly tried to interfere with the peaceful possession and enjoyment of the suit property on 02.05.2017 at about 12.30 p.m. Therefore, the respondent lodged a complaint on 02.05.2017 to the Inspector of Police, Killai Police Station and a CSR. No.64 of 2017 has also been given in the said complaint and the same is also pending for enquiry.

5. The second and third defendants in the suit filed a petition under Order 7 Rule 11 to reject the plaint stating that earlier the suit was pending between the father of the revision petitioners with regard to the suit property in O.S.Nos.239 of 2014 and 100 of 2008 have been suppressed by the respondent/plaintiff in writ proceedings and directions of this court and W.P.No.38591 of 2015 and also suppressed the proceedings in O.S.No.5 of 2016, W.P.No.4073 of 2016, Crl.O.P.No. 8377 of 2016 and W.P.No.19734 of 2016. Since, the suits and writ proceedings are pending without obtaining permission from Wakf Board, the lease in favour of the respondent/plaintiff is not valid. The plaint does not disclose any cause of action and they have not valued the suit properly and paid the correct Court fees. Therefore, the plaint

has to be rejected.

6. After completing the enquiry and hearing both parties, the trial Court dismissed the petition in I.A.No.506 of 2017 on the ground that none of the grounds raised by the revision petitioners in I.A.No.506 of 2017 to reject the plaint in O.S.No.70 of 2017 are not valid grounds as shown in the Order VII Rule 11 CPC. The plaint discloses the cause of action and the suit is based on only lease deed, whether the property belongs to petitioners or private trust, can be decided only after the trial and not at this stage. Therefore, the petition filed under Order VII Rule 11 CPC was dismissed. Against which the petitioners herein/defendants 2 and 3 in the suit have filed the present revision petition before this Court stating that the trial Court failed to consider the averments in the plaint and the plaintiff had suppressed the various judicial proceedings and some of the petitions disposed of and some of the petitions are pending.

7. The learned counsel for the revision petitioners would submit that the suit property is in the possession and enjoyment of the petitioners and his father entered into the lease deed and the petitioners father has also filed the suit and the same was also

suppressed. Therefore, the suit filed by the respondent is not maintainable and the trial Court failed to consider the affidavit and documents filed by the petitioners. In support of his contention, the learned counsel for the petitioner has placed reliance on the decisions of the Hon'ble Supreme Court reported in **2010 14 SCC 588 (Board of Wakf, West Bengal and another Vs. Anis Fatma Begum and another)** and judgment of this Court reported in 2007 1 LW 455 in the matter of Abdul Suban Vs. Syed Tharu Hussain. If the property belongs to Wakf board, then covered under the Wakf Act and Tribunal alone has got jurisdiction, no civil Court can decide the disputes regarding the Wakf property. But, admittedly in this case, the plaintiff has not stated that it is Wakf property. More soever, the learned counsel for the respondent has stated that it belongs to private trust whether the property belongs to private trust and plaintiff is entitled to get a relief of declaration and permanent injunction has to be decided only after recording the evidence. Therefore, the order dated 22.11.2017 passed by the learned Additional District Munsif, Chidambaram does not warrant interference.

8. The learned counsel for the respondent would further submit that the property belongs to private trust and no way

connected with the Wakf board. The suit in O.S.Nos.239 of 2014 and 100 of 2014 are no way connected with the present suit. Further, the respondent is not party to that suit. The revision petitioners are not aware of the suit and there is no question of suppression of the judicial proceedings. If the petitioner/defendants 2 and 3 in the suit are having any legal rights, it is burden of proof in their shoulders. Since the revision petitioners are disturbing the lawful possession of the respondent/plaintiff, he has approached the Civil Court for getting suitable remedy. The Civil Court is the competent Court to grant such a remedy. The revision petitioners/ 2 and 3 defendants and the first defendant are no way connected with the suit property in any form or in any manner including the 4th and 5th defendants. The suit property belongs to private trust and only beneficiaries are the legal heirs from the founder to existing persons and no one has right over the same including the petitioners and other defendants in the suit. Therefore, the trial Court has considered all these aspects and also the grounds raised in the affidavit and not the one of the reasons mentioned under the Order VII Rule 11. Therefore, the trial Court dismissed the petitions and the same does not require any interference.

9. Heard both sides and perused the materials available on

record.

10. It is seen that the respondent/plaintiff has filed a suit in O.S.No.70 of 2017 before the learned Additional District Munsif, Chidambaram against the petitioners and three others for a declaration declaring that plaintiff is having right of lease by virtue of registered lease deed dated 16.09.2016, registered as document No.1598 of 2015, Parangipettai and for permanent injunction restraining from the petitioners from interfering with the peaceful possession. The plaintiffs have stated that the property belongs to private Trust. Therefore, the respondent entered into the lease deed from the private trust and the revision petitioners and other defendants in the suit are no way connected with the suit. Therefore, the revision petitioners cannot interfere with the possession of the respondent.

11. The revision petitioners/defendants contention is that the property belongs to Wakf and the father of the revision petitioners had a lease hold right and their father was in possession of the property and there was a legal proceedings and direction of this Court also, which was suppressed and no suit will lie before the Civil Court. Further no permission was obtained from Wakf Board. Therefore, the

plaint is liable to be rejected. The respondent has filed the suit only for declaration and injunction based on the lease hold right and stated that the property belongs to private trust. The case of the petitioners is that the property belongs to Wakf and they have the lease hold right.

12. It is settled proposition of law, while deciding the petition for rejection of plaint, under Order 7 Rule 11, the Court has to see only the averments made in the plaint and the documents filed by the plaintiffs along with the plaint. If the plaint averments disclose the cause of action and not barred by any law and not attracted by any one of the grounds mentioned under the Order VII Rule 11 CPC. It can be proceeded with further. But, not the defence taken by the defendant and documents relied on by the defendants. On reading of the entire records and also the documents annexed with the plaint which discloses the cause of action and there is no ground to reject the plaint.

13. According to the respondent/plaintiff, the property belongs to the private trust. Though the petitioners stated that the property belongs to Wakf and whether it is a trust property or not, whether the lease deed dated 16.09.2016 registered as documents

No.1598 of 2015 is valid or not, it can be decided only after recording the evidence not at this stage. The judgment referred to by the learned counsel for the petitioners is not helpful to the fact of the present case on hand. The trial Court has elaborately discussed and considered the scope of the Order VII Rule 11, therefore, this Court does not find any perversity in the order passed by the trial Court.

14. In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

24.04.2019

Index:Yes/No

Speaking order/Non speaking order

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To

The Additional District Munsif Court, Chidambaram.

P.VELMURUGAN, J.,

rli



Order in
CRP.(PD).No.4735 of 2017
and M.P.No.22293 of 2017

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