

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.04.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.239 of 2010
and
M.P.No.1 of 2010

Myilsamy

... Petitioner

vs.

1.Jagannathan
2.Kannammal @ Pavathai
3.Thulasirajan
4.Chinnasami Gounder (Died)
5.Sulochana
6.Subramanian

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 09.10.2009 passed in C.M.A.No.14 of 2008 on the file of the First Additional Subordinate Judge, Erode, Erode District, reversing the order dated 15.01.2008 passed in I.A.No.1097 of 2006 in O.S.No.468 of 2005 on the file of the First Additional District Munsif, Erode, and to allow this Civil Revision Petition.

For Petitioner : Mr.V.Kathirvelu

For Respondents 2 &3 : Mr.M.Guruprasad

For respondents 1, 5 & 6: No appearance

ORDER

This Civil Revision Petition arises against the Order and Decree dated 09.10.2009 passed in C.M.A.No.14 of 2008 on the file of the First Additional Subordinate Judge, Erode, in reversing the fair and final order dated 15.01.2008 passed in I.A.No.1097 of 2006 in O.S.No.468 of 2005 on the file of the First Additional District Munsif, Erode.

2. The learned counsel for the revision petitioner would submit that the revision petitioner/plaintiff filed a suit in O.S.No.468 of 2005 on the file of the First Additional District Munsif, Erode, praying for declaration of the plaintiff's title to the suit property and for granting permanent injunction restraining the defendants, their men, agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. On the other hand, denying the averments made in the plaint, the defendants 2 and 3 filed Written Statement in the suit in O.S.No.468 of 2005.

4. Subsequently, the revision petitioner/plaintiff filed an Interlocutory Application in I.A.No.1097 of 2006 on the file of the First Additional District Munsif, Erode, praying for the grant of temporary injunction restraining the respondents/defendants, their men, etc., from

interfering with the revision petitioner/plaintiff's peaceful possession and enjoyment of the property till the disposal of the suit.

5. Upon hearing both sides and considering the documents marked as Exs.A.4 to A.8, viz., revenue records, which reflect that the suit property stands in the name of the revision petitioner, the First Additional District Munsif, Erode, allowed the Interlocutory Application in I.A.No.1097 of 2006 by granting temporary injunction as sought for in the Application on 15.1.2008.

6. Aggrieved by the said order, the defendants 2 and 3/respondents 2 and 3, preferred an Appeal in C.M.A.No.14 of 2008 before the First Additional Subordinate Judge, Erode.

7. After hearing both sides, by order dated 9.10.2009, the learned First Additional Subordinate Judge, Erode, has set aside the order dated 15.1.2008 passed by the learned First Additional District Munsif, Erode in I.A.No.1097 of 2006 and allowed the Civil Miscellaneous Appeal No.14 of 2008 on the ground that no final decree was passed in a partition suit filed in O.S.No.273 of 1990 on the file of the Subordinate Judge, Erode, by the mother of the respondents 5 and 6, viz., Pappayammal, against the father of the revision petitioner/plaintiff and father of the third respondent and therefore, the petitioner was not entitled for the relief sought for in

I.A.No.1097 of 2006 in O.S.No.468 of 2005 on the file of the First Additional District Munsif, Erode.

8. Aggrieved by the Order and Decree passed in C.M.A.No.14 of 2008 dated 09.10.2009, the revision petitioner/plaintiff filed the above Civil Revision Petition before this Court.

9. Today, a Memo dated 12.4.2016 was filed on behalf of the petitioner stating that the fourth defendant/fourth respondent, namely, Chinnasamy Gounder died on 22.2.2006 and his legal heirs, namely, Sulochana and Subramanian were already on record as respondents 5 and 6 and therefore, they may be recognised as the legal representatives of the deceased fourth respondent. There is no objection for this on the side of the respondents. Hence, the memo is taken on record and the respondents 5 and 6 are recognised as the legal representatives of the fourth respondent/defendant.

10. Mr.V.Kathirvelu, learned counsel appearing for the revision petitioner has submitted that the plaintiff's grand father, one Kolandianna Gounder, filed a suit for partition of his 1/3rd share in the suit property in O.S.No.333 of 1981 on the file of the learned Subordinate Judge, Erode, and as per the final Decree passed in I.A.No.736 of 1982 in O.S.No.333 of 1981, they had taken possession of their share of property and the respondents 2

and 3 herein also had taken possession of their share including a residential house, respectively. Subsequently, the revision petitioner and the respondents 2 and 3 had also sold their share in Item No.2 of the property which was allotted to them as per the decree in I.A.No.736 of 1982 in O.S.No.333 of 1981. *Thereafter, in the suit in O.S.No.273 of 1990 filed against the father of the plaintiff by the mother of the respondents 5 and 6, final decree was passed and the possession was also handedover.* Without appreciating these facts, the lower appellate Court rendered judgment in C.M.A.No.14 of 2008 reversing the reasoned order passed in I.A.No.1097 of 2006 in O.S.No.468 of 2005 granting temporary injunction, and therefore, the Judgment and Decree of the appellate Court has to be set aside.

11. On the other hand, Mr.M.Guruprasad, learned counsel appearing for the respondents 2 and 3 has submitted that the appellate Court has found that final decree in a suit in O.S.No.273 of 1990 filed by one Pappayammal, the mother of the respondents 5 and 6 against the father of the third respondent and the father of the plaintiff is still pending and therefore, the revision petitioner is not entitled to have the benefit of temporary injunction and therefore, has set aside the order of temporary injunction granted by the learned First Additional District Munsif, Erode in I.A.No.1097 of 2006. Adding further, the learned counsel appearing for the respondents 2 and 3 has submitted that an order of temporary injunction cannot be granted against the co-owners pending disposal of the suit in

O.S.No.468 of 2005 and hence, the Civil Revision Petition is liable to be dismissed.

12. Heard Mr.V.Kathirvelu, learned counsel appearing for the revision petitioner and Mr.M.Guruprasad, learned counsel appearing for the respondents 2 and 3 and perused the records.

13. Order XXXIX, Rule 1 of CPC reads as follows:-

1. Cases in which temporary injunction may be granted – Where any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any property to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff

in relation to any property in dispute in the suit as the Court thinks fit, until disposal of the suit or until further orders.

14. The documents, viz., Exs.A.4 to A.8 marked by the revision petitioner are revenue records. Ex.A.4 is the patta standing in the name of the revision petitioner. Ex.A.5 is the "A" Register. Ex.A.6 is the Kist Receipt. Ex.A.7 is the Property Tax. Ex.A.8 is the Drinking Water Tax Receipt. These documents were not disputed by the respondents. All these documents clearly show that the revision petitioner has been in possession of the suit property. Based on the documents Exs.A.4 to A.8, the First Additional District Munsif, Erode, came to the conclusion that the petitioner has been in possession of the suit property and therefore, granted the relief of temporary injunction. While dealing with the Civil Miscellaneous Appeal on the grant of temporary injunction, the lower appellate Court has gone into the merits of the suit. Moreover, pending the Civil Revision Petition, the revision petitioner has got the benefit of interim order. Therefore, the impugned Order of the lower appellate Court deserves to be set aside. All those points urged before this Court by the learned counsels can be agitated before the Trial Court in the main suit.

15. In the light of the above discussion and considering the facts of the case, this Court is inclined to pass the following orders:-

(i) The Order and Decree dated 09.10.2009 passed in C.M.A.No.14 of 2008 on the file of the First Additional Subordinate Judge, Erode, is set aside.

(ii) The fair and final Order dated 15.01.2008 passed in I.A.No.1097 of 2006 in O.S.No.468 of 2005 on the file of the First Additional District Munsif, Erode, is restored.

(ii) The trial Court is directed to dispose of the suit in O.S.No.468 of 2005 within a period of four months from the date of receipt of a copy of this order on merits and in accordance with law, without being influenced by the orders passed by this Court as well as the Courts below.

16. In the result, the Civil Revision Petition is disposed of. The connected Miscellaneous Petition is closed. No order as to costs.

13.04.2016

Index : yes / no

Internet :yes / no

asvm

To

1. The First Additional Subordinate Judge,
Erode
2. The First Additional District Munsif,
Erode.

D.KRISHNAKUMAR, J.

(asvm)

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