

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.12.2015

DATED : 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD) No.1695 of 2013

and

M.P.No.1 of 2013

1. Radha
2. P.Albert

... Petitioners/Plaintiffs

Vs.

1. M.Radhakrishnan
2. V.Sobia Lawrence

...Respondents/Defendants

Prayer: Petition is filed under Article 227 of the Constitution of India, against the Fair and Decretal order dated 25.02.2013 made in I.A.No.18056 of 2012 in O.S.No.2728 of 2012 on the file of the VIII Assistant City Civil Judge, Chennai.

For Petitioners : Mr.N.Premkumar

For R-1 : Mr.R.Munusamy

For R-2 : Mr.M.Mohideen Pitchai

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ORDER

This Civil Revision Petition is filed by the petitioners/plaintiffs, against the order dated 25.02.2013 passed by the learned VIII Assistant Judge, City Civil Court, Chennai, in I.A.No.18056 of 2012 in O.S.No.2728 of 2012, in and by which, the said application filed by the second defendant under Sections 10 and 151 of CPC, for staying all further proceedings in the above suit till the final disposal of the appeals in A.S.Nos.343 and 344 of 2012, was allowed.

2. Learned counsel for the petitioners/plaintiffs contended that the trial Court failed to consider the materials available on record in its proper perspective and erroneously allowed the application filed under Section 10 of CPC. It is further contended that the trial Court has failed to consider the averments set out in the counter affidavit filed by the petitioners, more particularly, that the issues to be determined and the points for adjudication in the suit for redemption filed by the petitioners/plaintiffs in O.S.No.2728 of 2012 and the points for adjudication in A.S.Nos.343 and 344 of 2012 are totally separate and different from each other. The trial Court ought to have

considered the fact that the second respondent/second defendant has obtained an interim order of stay of the decree passed in the earlier suit filed by the petitioner in O.S.No.8681 of 2010 by suppressing the material facts before this Court. Hence, the learned counsel for the petitioners/plaintiffs submitted that the impugned order passed by the trial Court may be set aside and the Civil Revision Petition may be allowed. In support of his submissions, the learned counsel for the petitioners/plaintiffs has relied upon the following decisions:-

(i) AIR 1981 Gujarat 110 (M/s.Sohal Engineering Works, Bhandup, Bombay Vs. Rustam Jehangir Vakil Mills Company Ltd., Ahmedabad)

(ii) AIR 1992 Madras 363 (R.Srinivasan Vs. Southern Petrochemical Industries Corporation Ltd., and

(iii) AIR 2005 Supreme Court 242 (National Institute of Mental Health & Neuro Sciences Vs. C.Parameshwara).

3. Learned counsel for the respondents/defendants contended that the dispute between the parties is already decided in the previous suit and now, appeals are only pending as against the

previous suit. It is further contended by the learned counsel that the trial Court, after considering the facts of the case and relevant materials available on record, allowed the application filed under Section 10 of CPC and therefore, there is no infirmity or illegality in the impugned order passed by the trial Court and hence, he prayed for dismissal of the Civil Revision Petition.

4. This Court heard the submissions made by the learned counsel on either side and perused the materials available on record.

5. It is admitted by both sides that the petitioners/plaintiffs are the owners of the suit property and they mortgaged the suit property to one Mr.Radhakrishnan, who is the first respondent herein/first defendant and since the petitioners/plaintiffs have not settled the mortgage amount, the property was sold in public auction and the property was purchased by the second respondent herein/second defendant. A Sale Deed dated 29.09.2003 was executed by the first defendant in favour of the second defendant. The second defendant filed R.C.O.P.No.2320 of 2003 for eviction of the petitioners/plaintiffs from the suit property and the said petition was dismissed.

6. It is further admitted by both sides that the second respondent herein/second defendant, who is the purchaser of the suit property, filed a suit in C.S.No.588 of 2005 for recovery of possession of the suit property from the plaintiffs and also for recovery of a sum of Rs.2,00,000/- towards damages for the alleged physical and mental torture said to have been caused by the plaintiffs and also for recovery of another sum of Rs.2,00,000/- towards mesne profits and Rs.20,000/- per month towards future mesne profits from the date of plaint till the date of realisation. Further, it is admitted that the original owners i.e., the civil revision petitioners/plaintiffs have already filed a suit in O.S.No.4935 of 2004 before the City Civil Court, Chennai. It is also admitted that there are previous litigations between the petitioners/plaintiffs and the respondents/defendants and in respect of which, A.S.No.343 of 2012, filed by the second defendant against the judgment and decree in O.S.No.7456 of 2010, dismissing the suit for delivery of possession and A.S.No.344 of 2012, filed by the second defendant against the judgment and decree in O.S.No.8681 of 2010, to declare the sale deed as null and void and for permanent injunction, are pending before this Court.

7. It is admitted that the plaintiffs have filed a suit for declaration to declare the Sale Deed executed in favour of the second defendant viz., Sobia Lawrence, as null and void. The suit filed by the second defendant in O.S.No.7456 of 2010 and the suit filed by the plaintiffs in O.S.No.8681 of 2010 were tried together and a common judgment was passed on 29.10.2011. It is admitted by both sides that in the above said suits, there were so many issues raised i.e., Sobia Lawrence, who is the auction purchaser of the property claimed that she had purchased the property in the auction and she is the owner of the property and she also claimed recovery of possession and past damages of Rs.2,00,000/- for mental agony and Rs.2,00,000/- towards past mesne profits and Rs.20,000/- per month for future mesne profits. The issues raised in the suit in O.S.No.8681 of 2010 are, whether the plaintiffs are entitled to the relief of declaration as sought for? (i.e., the Sale Deed executed in favour of the second defendant is null and void) and whether the plaintiffs are entitled for the relief of injunction as prayed for?. The suit filed by the petitioners/plaintiffs in O.S.No.8681 of 2010 was decreed in favour of the revision petitioners/plaintiffs and the suit in O.S.No.7456 of 2010, filed by the second defendant was dismissed on 29.10.2011.

8. Further, it is admitted by both sides that as against the above common judgment, appeals were preferred by the second defendant in A.S.Nos.343 and 344 of 2012 before this Court and the same are now pending and interim stay of operation of the decree was also granted in both the above appeals. Hence, the issue whether the Sale Deed executed by the first defendant in favour of the second defendant, is null and void or not, has to be finally decided at the time of final disposal of the above appeals in A.S.Nos.343 and 344 of 2012.

9. Further, it is admitted that the present suit in O.S.No.2728 of 2012 is filed by the owner of the property i.e., the civil revision petitioners/plaintiffs against the respondents/defendants to redeem the mortgage deed dated 03.12.1998 executed in favour of the first defendant and the second defendant-Sobia Lawrence, who is said to be the purchaser of the property in the auction. Hence, the common issues whether the civil revision petitioners/plaintiffs are entitled for redemption of the suit property and whether the Sale Deed executed in favour of the second defendant is valid or not, have to be decided at the time of final disposal of the appeals in A.S.Nos.343 and 344 of

2012. Hence, the argument of the learned counsel for the petitioners/plaintiffs that the present suit filed for passing a preliminary decree of redemption is not at all related to the previous suit, is not at all acceptable one and the said argument is not sustainable. The argument of the learned counsel for the respondents/defendants that since the appeals in A.S.Nos.343 and 344 of 2012 are pending before this Court, it is a fit case to grant stay under Section 10 of CPC, is acceptable.

10. In view of the above facts and circumstances of the case, the trial Court has correctly applied the provisions of law. Therefore, this Court is of the considered view that there is no infirmity or illegality in the impugned order passed by the trial Court and hence, the civil revision petition is liable to be dismissed.

11. In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. No costs.

05.01.2016

Index :Yes / No
Internet :Yes / No
Jrl

To

The VIII Assistant Judge,
City Civil Court, Chennai.

G.CHOCKALINGAM, J.

Jrl

Order in

C.R.P.(PD).No.1695 of 2013

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