

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.09.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) No.2647 of 2010

&

M.P.No.1 of 2010

1. Damodharan
2. D.Sundaravalli
3. M.Amaravathi

... Petitioners

Vs.

G.Raja

... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order of the District Munsif, Gudiyatham dated 30.01.2010 in I.A.No.87 of 2009 in O.S.No.No.347 of 2007.

For Petitioner : Mr.V.Selvaraj

For Respondent : No appearance

ORDER

When the matter came up for hearing today, Mr.V.Selvaraj, learned counsel for the revision petitioners is present. Despite service of notice on the respondent, he has not chosen to appear before this Court, either in person or through his counsel. Therefore, he is called absent.

2. Heard Mr.Selvaraj, learned counsel for the revision petitioners and perused the grounds of revision along with the impugned Order dated 30.01.2010. Having regard to the relevant facts and circumstances arising out of this case, the following order is being passed on merits in the absence of the respondent.

3. The revision petitioners herein are the defendants in O.S.No.347 of 2007 and the respondent herein is the plaintiff. It is manifested from the records that the respondent seems to have filed the above suit as against the revision petitioners seeking the following relief :

a) to declare that the plaintiff is the absolute owner of the schedule mentioned properties.

b) granting permanent injunction restraining the defendants and their men, agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property in any manner and

c) for costs.

4. According to the respondent/plaintiff, he had purchased the schedule mentioned property from one K.V.Somasundaram under a registered sale deed dated 26.5.2003 and from the date of purchase he had

been in possession and enjoyment of the schedule mentioned property as the absolute owner without any interference and he had also been cultivating the lands. It is also revealed that according to the respondent/plaintiff, the revision petitioners are third parties and that they had no right or title, whatsoever, in the schedule mentioned properties. It is also the case of the respondent/plaintiff that they wanted to grab the property taking advantage of his old age and helplessness and as such on 26.10.2007, they had attempted to trespass into the suit property and it was prevented with great difficulty. The respondent/plaintiff had therefore filed the above suit.

5. On the other hand, the revisions petitioners have also filed their written statement rebutting the allegations made in the plaint. They have contended that the suit property was purchased by them in a sale held by the Debt Recovery Tribunal, Chennai on 6.10.2006 in the Original Application in O.A.No.1771 of 2001 in which the respondent/plaintiff's father Somasundaram was the defendant. The said sale was confirmed and the sale certificate was also issued on 07.08.2003 and later the sale certificate was also registered on 09.08.2007. Delivery of possession of the suit property was also taken on 14.01.2008 and after the above said purchase, the revision petitioners/defendants alone have been in possession and enjoyment of the same. They would further contend that the trial Court viz., the District Munsif Court, Gudiyatham was not having jurisdiction to entertain the suit. During

the pendency of the said suit, an application in I.A.No.87 of 2009 was filed by the revision petitioners/defendants under Order VII Rule 11 of the Code of Civil Procedure so as to reject the plaint, as the trial Court is not having jurisdiction to entertain the suit, because it is specifically barred under section 18 of Recovery of Debts due to Bank and Financial Institutions Act and since that petition was dismissed, present revision petition has been filed, challenging the legality of the order.

6. Mr.V.Selvaraj, learned counsel for the petitioner has mainly projected his argument on the sole ground of lacking of jurisdiction of the trial Court to entertain the suit. Section 18(A) of Recovery of Debts due to Bank and Financial Institutions Act envisages that

Section 18(A) :

“On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction powers or authority (except Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India) in relation to the matters specified in Section 17.”

7. In so far as the present revision is concerned, Order VII Rule 11 is

also very much essential and clause (d) of Rule 11 says that where the suit appears from the statement in the plaint to be barred by any law; the plaint shall be rejected. But on a perusal of the impugned Order, the learned trial Judge, viz., the District Munsif has failed to consider this aspect and when the suit is barred by a specific provision of law, the suit ought not to have been taken on file and entertained by the trial Court and in so far as Section 18 of the Recovery of Debts due to Bank and Financial Institutions Act is concerned, the suit itself ought to have been rejected under sub clause (d) of Rule 11 of Order VII of CPC. In view of the above facts, this Court is of considered view that the trial Court has no jurisdiction to entertain the suit and therefore, the impugned order is deserved to be set aside.

18. In the result, this revision petition is allowed and the impugned order dated 30.01.2010 is set aside and the petition in I.A.No.87 of 2009 is allowed and the plaint in O.S.No.347 of 2007 is rejected. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

28.09.2016

vrc

Index:yes/no
Internet:yes

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To

The District Munsif,
Gudiyatham.

T.MATHIVANAN.J.,

vrc

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