

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2016

Coram

The Hon'ble Mr.Justice M.DURAISWAMY

CRP.NO.170 of 2016
and CMP No.885 of 2016

Arjunan

...Petitioner

Vs

1. Jayaprakash

2. Kalaiarasi

3. Pandi Veeran

... Respondents

Civil Revision Petition filed under Section 227 of the Constitution of India against the return of the plaint order of the learned Subordinate Judge (Senior Division), Kallakurichi passed in OSSR.No.12091 of 2015 dated 06.01.2016.

For Petitioner : Mr.V.Manohar

For Respondents : Mr.N.Manokaran (R-1)
Mrs.S.Meenakumari (R-2)
Mr.T.Arunkumar (R3)

O R D E R

Aggrieved over the order dated 06.01.2016 passed by the Subordinate Judge, Kallakurichi in un-numbered O.S.SR.No.12091 of 2015, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff has filed the un-numbered Suit in O.S.Sr.No.12091 of 2015 for the following reliefs:-

“ (i) declaring the title of the plaintiff over the suit property and granting consequential injunction relief restraining the defendants, their men and agents from disturbing the peaceful possession and enjoyment of the suit property by the plaintiff;

(ii) declaring that the entire proceedings in O.S.No.359 of 2004 on the file of the District Munsif Court, Kallakurichi, in favour of the 2nd defendant and its subsequent proceedings is null and void and not binding on the plaintiff;

(iii) declaring that the entire proceedings in O.S.No.91 of 2011 on the

file of the Subordinate Judge Court, Kallakurichi and its subsequent proceedings in favour of the 1st defendant are null and void and not binding on the plaintiff;

(iv) Award the cost of the suit payable by the defendants to the plaintiff;
(v) and pass such other order for the relief deemed fit and proper by the Honourable Court and render justice”.

3. The trial Court had rejected the plaint by order dated 06.01.2016, stating that the suit is not maintainable, in view of the fact that the plaintiff purchased the property when an order of attachment was in force and that the sale itself is void under Section 64 of the Code of Civil Procedure. Further, the trial Court observed that the Vendor of the plaintiff suffered a decree, which resulted in delivery of the property to the third party auction purchaser and that the plaintiff is bound by the decree and subsequent delivery of the suit property. Aggrieved over the order passed by the trial Court in rejecting

the plaint, even at a pre-numbering stage, the plaintiff has filed the above Civil Revision Petition.

4. The learned counsel appearing for the 1st respondent submitted that in the suit in O.S.No.250 of 2001 on the file of the District Munsif Court, Kallakurichi filed by one Chakravarthi, as against the 3rd respondent herein, who is the brother of the revision petitioner, an application in I.A.No.596 of 2001 under Order 38 Rule 5 CPC was filed and in the said application, the 3rd defendant has given an undertaking that he will not alienate the suit properties till the disposal of the suit. The affidavit of undertaking filed by the 3rd respondent has been produced by the counsel for the 1st respondent in the typed set of papers at page 6. On a perusal of the affidavit of undertaking, it could be seen that the 3rd defendant has given an undertaking that he will not alienate the suit properties till the disposal of the suit. However, the learned counsel appearing for the 3rd respondent submitted that he has

instructions to dispute the genuineness of the affidavit of undertaking.

5. The suit in O.S.No.250 of 2001 (re-numbered as O.S.No.359 of 2004) was decreed by the trial Court on 14.09.2004. Thereafter, the revision petitioner had purchased the suit properties from the 3rd respondent on 04.05.2006. Pursuant to the decree granted in O.S.No.250 of 2001 (re-numbered as O.S.No.359 of 2004), the plaintiff therein filed an Execution Petition in E.P.No.90 of 2006 and the suit property was attached on 10.08.2006. In the said Execution Petition, the revision petitioner also filed an application in E.A.No.536 of 2007 under Order 21 Rule 58 CPC on 24.04.2007. According to the learned counsel appearing for the 1st respondent, the said application was dismissed by the Executing Court on 17.06.2008.

6. Now the issue to be decided in the case on hand is as to whether the undertaking given by the 3rd respondent would

continue even after the disposal of the suit in O.S.No.250 of 2001 (re-numbered as O.S.No.359 of 2004).

7. The learned counsel for the revision petitioner submitted that even assuming that the undertaking given by the 3rd respondent is true and genuine, it would operate only till the disposal of the suit and it would not extend further. However, the learned counsel appearing for the 1st respondent submitted that the undertaking given by the 3rd respondent would continue till the decree is discharged.

8. Since the issues involved in the suit can be decided only after the full fledged trial, I am of view that it is not a fit case for rejecting the plaint at the threshold, even before numbering of the suit and the trial Court should have numbered the suit and allowed the parties to prosecute the same. Since the trial Court has to decide the issues involved in the suit, I am not going into the merits of the matter in

detail. In these circumstances, the order passed by the learned Subordinate Judge, Kallakurichi in un-numbered O.S.No.12091 of 2015 is liable to be set aside and accordingly set aside.

9. The Civil Revision Petition is allowed and the petitioner is granted one week time to re-present the original plaint before the trial Court. On such re-presentation, the trial Court is directed to number the suit and dispose of the same on merits and in accordance with law.

No costs. Connected miscellaneous petition is closed.

20.07.2016

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Note:

Registry is directed to return the original
plaint to the counsel for the petitioner
on or before 25.07.2016

M.DURAI SWAMY,J

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