

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2748 of 2016

Kalavathi : Petitioner

versus

1.K.Nirmala

S.Maragathavalli (Deceased)

2.R.Shanthi

3.S.Anbunathan

4.M.Kalai Selvi

5.Dr.Karthick

6.S.Prasad : Respondents

PRAYER: Revision filed against the order dated 6.7.2016, in I.A.No.228 of 2016 in O.S.No.11174 of 2010 on the file of the VI Additional City Civil Court, Chennai.

For petitioner :: Mr.D.S.Ramesh

For respondents :: Mr.P.B.Sampath Kumar

ORDER

The petitioner filed a suit for declaration and injunction. The suit was opposed by the respondents by filing written statement wherein a counter claim was made.

2. The Trial Court framed an issue as to whether defendants 1 and 2 are entitled to the relief of mandatory injunction.

3. The petitioner filed an application in I.A.No.228 of 2016 before the Trial Court to recast the issue. The application was dismissed by the Trial Court. Feeling aggrieved, the petitioner is before this Court.

4. The learned counsel for the petitioner contended that respondents 1 and 2 ought to have prayed for a decree of recovery of possession. The Trial Court was therefore not correct in framing an issue with respect to mandatory injunction. The learned counsel further contended that the Trial Court failed to frame an issue as to whether the petitioner is a licensee of the property. According to the learned counsel, the Trial Court failed to address the issue raised by the petitioner and as such, the impugned order is liable to be set aside.

5. I have also heard the learned counsel for the respondents.

6. The Trial Court framed an issue with regard to mandatory injunction, taking into account the plea taken by defendants 1 and 2 in the written statement. The burden of proof is on defendants 1 and 2 to prove that they are entitled to a decree of mandatory injunction. There is no

question of framing an issue with regard to declaratory relief at this point of time. In case, the trial Court is of the view that defendants 1 and 2 ought to have filed a suit for declaration, the consequences would follow. Similarly, there is no question of framing an issue with regard to the license on the strength of the written statement filed by the respondents. I am therefore of the view that the learned Trial Judge was perfectly correct in dismissing the application in I.A.No.228 of 2016.

7. In the upshot, I dismiss the civil revision petition. No costs.

8. The suit is of the year 2010. The learned Trial Judge is directed to dispose of the suit as expeditiously as possible.

09.11.2016

Index:Yes/no
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To
The VI Additional City Civil Court, Chennai.

K.K.SASIDHARAN, J.

(tar)

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