

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.Nos.2786 and 2787 of 2016
and
C.M.P.Nos.14224 and 14225 of 2016

1. Ganesan
2. Vellingiri
3. M.Santhamani
4. M.Thangaraj
5. M.Sakthivel
6. Kandhasamy
7. Marakkutti

... Petitioners in both C.R.Ps

[Cause Title accepted vide order
of Court dated 01.09.2016
passed in CMP Nos.14116 and
14115 of 2016 in CRP SR.Nos.
61878 and 61876 of 2016]

vs.

1. R.Balasundaram

S.Narayanasamy (Died)

2. M.Vellingiri
3. Balasubramani
4. Syed Farook

... Respondents in both C.R.Ps

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and final orders dated 27.03.2015 passed by the learned II Additional Subordinate Judge, Coimbatore in C.M.A.No.13 of 2011 and C.M.A.No.18 of 2011 confirming the fair and final orders dated 10.02.2009 passed by the

learned I Additional District Munsif, Coimbatore in I.A.No.2155 of 2008 and I.A.No.2158 of 2008 in O.S.No.1772 of 2008 and O.S.No.1774 of 2008 respectively.

For Petitioners : Mr.S.Doraisamy, Senior Counsel
in both C.R.Ps for Mr.Kandhan Duraisami

For Respondents : Mr.S.Venkatesh
in both C.R.Ps

COMMON ORDER

The plaintiffs in O.S.No.1772 and 1774 of 2008 on the file of the I Additional District Munsif Court, Coimbatore are the revision petitioners, challenging the order passed by the Courts below in refusing to grant interim injunction, pending suit.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status and ranking in the suits.

3. The brief facts of the case is as follows:

(i) The suit is filed for a declaration declaring that the sale deed dated 13.06.2008 as void and not binding on the plaintiffs and for an injunction. The plaintiffs and the defendants are one and the

same in both the suits. However, the subject matter in the suits are different. The plaintiffs have stated that an extent of 4.58 acres in S.F.No.905/2 belong to them, having been purchased the same in the year 1937. After the expiry of the plaintiffs predecessor-in-title, her legal heirs were in possession and enjoyment of the suit property and at present, the plaintiffs are enjoying the suit property without any dispute. It is also stated that their predecessor-in-title had mortgaged the suit property to one Narayanasamy and got decreed. Subsequent to the decree of mortgage the amount was also settled. However, while effecting partition of the family properties, the mortgaged properties are also included by them in the partition deed. In that manner, the suit property was allotted to the fifth defendant's father when he was a minor. The defendants 4 to 6 seem to have executed the sale deed in favour of defendants 8 and 9. After the sale deed was executed, the defendants made an attempt to disturb the possession of the plaintiffs. Hence the plaintiffs filed I.A.Nos. 2155 and 2158 of 2008 for an injunction pending disposal of the suits, as the defendants were proclaiming to be the owners.

(ii) The said applications were resisted by the defendants by contending various averments on the merits of the case. However in para No.13 of the counter affidavit, it is stated by the defendants that

the plaintiffs had encroached a small portion of the suit property and the defendants have requested them to vacate and if they are not vacating on their own, the defendants would get them evicted under due process of law. In fact, even in the written statements filed by the defendants in the above suits, in para Nos.15 and 18, the same has been stated.

(iii) The learned I Additional District Munsif, Coimbatore while considering the interim applications seeking injunction had decided the matter on merits and held that the petitioners had not given any documents to prove that they are the owners of the suit property. It had further held that while considering the interim application, the Court cannot see as to whether the person claiming injunction is in possession of the property and that the same has to be decided only at the time of trial, while hearing the main suit. Therefore, the learned trial Judge after discussing the title of the plaintiffs had dismissed the applications for injunction.

(iv) Aggrieved by the same, the plaintiffs preferred appeals in CMA Nos.13 and 18 of 2011 before the learned II Additional Subordinate Judge, Coimbatore. The learned Appellate Judge by holding that, the factum of mortgage, whether it was redeemed,

whether the plaintiffs are in possession after the mortgage was redeemed, all have to be decided only at the time of trial, had confirmed the order passed by the learned trial Judge. As against the same, the present Civil Revision Petitions have been filed by the plaintiffs.

4. Heard both sides.

5. The learned Senior counsel for the revision petitioners/plaintiffs submitted that both the Courts below, basically relying upon the admissions made by the respondents/defendants in the written statement as well as in the counter affidavit, wherein it is categorically stated the plaintiffs have encroached upon a small portion in the suit property and they should be evicted only by due process of law, had dismissed their applications. However, neither the defendants in their affidavits nor their Advocates have stated, what is the extent that is in occupation of the plaintiffs out of the total extent of the suit property. Accordingly, he would pray for setting aside the orders passed by the courts below by allowing these revisions.

6. Learned counsel appearing for the respondents/defendants

also submits that he did not know, as to why such admissions were made in the written statement as well as in the counter affidavit.

7. Considering the fact that the written statement of the defendants have already been filed and pleadings are over in both the suits, it will be worthwhile to send both the parties for trial, instead of holding at the interlocutory stage. Both sides also agree that they will maintain status quo as on today, till the disposal of the suits, however they would pray that both the suits may be tried together and disposed of.

8. In view of the above submission, without going into the merits of the case, the following order is passed:

(i) As the parties to the proceedings are one and the same, the learned I Additional District Munsif, Coimbatore is directed to take up both the suits together and dispose of the same. Since the suit is of the year 2008, the learned Judge is further directed to dispose of the suits on or before 30.04.2017.

(ii) Till such time the suits are disposed of, both the parties shall maintain status quo, as of today.

9. With the above direction, both these Civil Revision Petitions are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

vj2

05.12.2016

To

1. The I Additional District Munsif, Coimbatore
2. The II Additional Subordinate Judge, Coimbatore

PUSHPA SATHYANARAYANA.J

vj2

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