

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2016

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) No.3487 of 2013
and M.P.No.1 of 2013

1.Sekar
2.Seetharaman

.. Petitioners

Vs.

Raghavan

.. Respondent

Revision filed under Article 227 of Constitution of India against the fair and decretal order of the Principal Sub Court, Cuddalore in I.A.No.6 of 2013 in C.M.A.No.5 of 2013, dated 19.04.2013.

For Petitioners : Mr.C.R.Prasannan

for M/s.R.Meenal

For Respondent : No Appearance

ORDER

सत्यमेव जयते

This revision is directed against the order of the Principal Sub-Judge, Cuddalore in I.A.No.6 of 2013 in C.M.A.No.5 of 2013, allowing the petition filed by the respondent herein to stay all further proceedings in O.S.No.307 of 2008 on the file of the Principal District Munsif Court, Cuddalore, pending disposal of C.M.A.No.5 of 2013. The

petitioners are respondents in C.M.A.No.5 of 2013.

2. C.M.A.No.5 of 2013 has been preferred against the order dated 30.1.2013 passed in I.A.No.1092 of 2008 in O.S.No.307 of 2008.

3. The respondent herein is the plaintiff and he filed the suit for permanent injunction restraining the defendants, their men and agents from interfering with his peaceful possession and enjoyment of the suit property from cutting down two palmyrah trees and other trees in existence and from raising any construction on compound wall in the suit property. Along with the suit, the plaintiff has filed I.A.No.1092 of 2008 for ad-interim injunction and Court had granted ad-interim injunction. Thereafter, by an elaborate order dated 4.11.2009, allowed I.A.No.1092 of 2008 and the ad-interim injunction already granted was made absolute.

4. Aggrieved by the order made in I.A.No.1092 of 2008, the defendants have preferred C.M.A.No.14 of 2009 before the II Additional Sub-Court, Cuddalore. By an order dated 24.9.2010, the learned II Additional Sub Judge, Cuddalore closed the Civil Miscellaneous Appeal by directing the trial Court to order the

Advocate-Commissioner to inspect and measure the suit property along with the Taluk Surveyor and also to find out whether the parties are enjoying their properties and upon receipt of the report and sketch, the trial Court was directed to decide the suit within three months from the date of receipt of a copy of the said order.

5. Pointing out that there is an error in the result portion of the order in C.M.A.No.14 of 2009, the plaintiff has filed a Memo, before the Principal District Munsif Court, wherein it has been stated that the plaintiff is taking steps to have the errors rectified. However, at the instance of and as misled by the other side, the Court has revived I.A.No.1092 of 2008 on 23.11.2010 as if it stood remitted and passed subsequent orders of remitting the warrant of commission unlawfully, in the face of the factum of the appeal being dismissed. Therefore, the order dated 23.11.2010 reviving I.A.No.1092 of 2008 and the subsequent orders therein are vitiated by illegality, irregularities and opposed to all canons of law. Hence, the plaintiff prays to strike of the revival order dated 23.11.2010 and all other consequent and subsequent orders.

6. The said Memo has been taken on record by the trial Court. By an order dated 30.1.2013, the trial Court has not entertained the

Memo holding that there is no merit in the Memo to strike-off and to vacate the revival order dated 23.11.2010 as null and void. Aggrieved by the order dated 30.1.2013 passed in the Memo, the plaintiff has filed C.M.A.No.5 of 2013. Along with the CMA, the appellant filed I.A.No.6 of 2013 to stay all further proceedings of the suit pending disposal of the CMA. By an order dated 19.4.2013, the learned Principal Subordinate Judge, allowed I.A.No.6 of 2013 holding that there is sufficient cause to stay the further proceedings of the suit till the disposal of the main CMA.

7. The said order of the learned Principal Sub Judge, Cuddalore in I.A.No.6 of 2013 has been assailed by the defendants in this revision on the grounds that the learned Principal Sub Judge erred in passing a non-speaking final order without notice to the petitioners and had omitted to see that the plaintiff was seeking to make the order of the Appellate Court void and unsustainable by filing a Memo before the trial Court. He further submitted that the Court below ought to have noted that a proper measurement of the property would bring a quietus to the dispute.

8. I heard Mr.C.R.Prasanan for M/s.R.Meenal, learned counsel for the petitioners. Though notice was served on the respondent, he has

not entered appearance. His name is printed in the cause list.

9. On a perusal of the order of the appellate Court, I find that the appellate Court noting the filing of the suit and the interlocutory petition and also the documents, held that there is sufficient cause at this stage to stay the further proceedings of the suit. There is no discussion by the appellate Court for staying the suit till the disposal of the main CMA.

10. The petitioners were right in saying that the learned Principal Sub Judge, Cuddalore erred in passing non-speaking order without notice to the petitioners and also omitted to see that the plaintiff did not want to dispose of the main CMA and also did not want to face the trial of the suit. Furthermore, as rightly pointed out by the learned counsel for the defendants, in order to protract the proceedings, the plaintiff has filed the petition for staying of the suit.

11. Since this revision petition is arising out of the order passed in I.A.No.6 of 2013 in C.M.A.No.5 of 2013 staying all the further proceedings of the suit in O.S.No.307 of 2018, this Court can pass an order requiring the learned Principal Sub Judge, Cuddalore to dispose of the main CMA in a time bound manner.

12. In the result, the Civil Revision Petition is allowed and the order dated 19.04.2013 passed in I.A.No.6 of 2013 in C.M.A.No.5 of 2013 on the file of the Principal Sub-Court, Cuddalore is set aside. The learned Principal Subordinate Judge, Cuddalore is directed to dispose of CMA.No.5 of 2013 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, M.P.No1. of 2013 is closed.

20.12.2016

Note: Issue order copy on 21.02.2018
vs

Index : Yes/No
Internet: Yes/No

To

The Principal Subordinate Judge,
Cuddalore.

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M.V.MURALIDARAN,J.

VS



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and
M.P.No.1 of 2013

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