

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) Nos. 4616 & 4651 of 2010
and
M.P. Nos.1 & 2 of 2010 in CRP (PD) No.4616 of 2010
and
M.P. No.1/2010 in CRP (PD) No.4651 of 2010

Senthilkumar

.. Petitioner in both CRPs

Vs

1. B. Rajendaran
2. Renugalakshmi
3. D. Venkudupathi
4. Sathiyapriya
5. A. Muthusivasamy
6. Swapana Devassy KuttiJose
7. B.R. Duraisamy
8. R. Balasubramaniam
9. Indirani

.. Respondents in both CRPs

COMMON PRAYER: Both the Civil Revision Petitions are filed under Article 227 of Constitution of India, to set aside the order dated 08.10.2010 in I.A. No. 368 of 2010 and dated 16.11.2010 in I.A. No.491 of 2010 in I.A. No.368 of 2010 in O.S. No.82 of 2010 on the file of Subordinate Judge, Udumalpet.

For Petitioner : Mr. N. Umapathi

For Respondents : Mr. C.V. Ashok Kumar for R1 to R4
for Mr. C. Jagadish
No Appearance for R5 to R9

ORDER

The C.R.P.No. 4616 of 2010 arises against the order dated 08.10.2010 in I.A. No. 368 of 2010 in O.S. No.82 of 2010 and C.R.P. No.4651 of 2010 arises against the order dated 16.11.2010 in I.A. No.491 of 2010 in I.A. No.368 of 2010, in O.S. No.82 of 2010 on the file of Subordinate Judge, Udumalpet. The petitioners and respondents in both the petitions are the same and challenging the orders passed in the Interlocutory Applications in the same suit.

2. Learned counsel for the Revision petitioner/ 2nd defendant submitted that the respondents 1 to 6 herein, filed a suit in O.S. No. 82 of 2010 on the file of the Subordinate Judge, Udumalpet, seeking for permanent injunction against the revision petitioner and the respondents 7 to 9 herein. In the said suit, the respondents have not filed any documents to prove that they are in possession of the suit property. In the said I.A. No.368 of 2010, notice was ordered on

09.08.2010 returnable on 17.08.2010 for filing counter affidavit. Again the case was adjourned to 09.09.2010. On that date, since it was a declared holiday, the case was posted to 08.10.2010. On that day, the revision petitioner was ready to file a counter in the Interlocutory Application in I.A.No.368 of 2010. But, due to sudden illness the revision petitioner was not in a position to attend the Court. Therefore, the trial court granted an ex-parte interim injunction, which reads as follows :-

" Paper Publication for R3. Counter of R1, R2, R4 Paper publication effected. R3 called absent set exparte. Counter of R1, R2, R4 not filed. R1, R2, R4 called absent. set exparte. Perused the affidavit. Petition is allowed."

Challenging the same, an Interlocutory Application in I.A. No.491 of 2010 against the order passed by the trial court in I.A. No.368 of 2010 in O.S. No. 82 of 2010 was filed immediately, by the revision petitioner/ 2nd defendant. However, the trial court dismissed the same on 16.11.2010. Aggrieved by the said orders dated 08.10.2010 and 16.11.2010, the present Revision Petitions are filed before this Court.

3. According to the learned counsel for the respondents, the trial court has rightly come to a conclusion and granted the order of interim injunction and dismissed the I.A. No.491 of 2010 to set aside the ex parte injunction order, since the said order was passed only on merits. He further submitted that the revision petitioner/ 2nd defendant was not vigilant to file the counter affidavit on the hearing date and therefore the trial court has allowed the I.A. NO.368 of 2010 and the revision petitioner was set ex-parte. The said order is only an interim order and the respondents herein, are ready to co-operate for the trial. He further prayed that at this stage, the interim order shall not be modified or reversed.

4. Heard Mr. N. Umpathi, learned counsel for the petitioner and Mr.C.V. Ashok Kumar, learned counsel for the respondents and perused the material on records.

5. Learned counsel for both the parties, sought before this Court, to issue a direction to the trial court to dispose of the suit itself within a stipulated period.

6. The respondents herein, filed the suit in O.S. No.82 of 2010 and an Interlocutory Application in I.A. No.368 of 2010 in O.S. No. 82 of 2010 on the file of the Sub Court, Udumalpet, seeking for grant of an order of interim injunction against the revision petitioner. Since the revision petitioner/ 2nd defendant did not appear on 08.10.2010 and the trial court granted an order of ex-parte interim injunction. The revision petitioner/2nd defendant has also filed an I.A. No.491 of 2010 praying to set aside the order of ex-parte interim injunction dated 08.10.2010 passed by the trial court in I.A. No. 368 of 2010 in O.S. No.82 of 2010. But, the trial court dismissed the said Interlocutory Application also, on 16.11.2010. The revision petitioner/ 2nd defendant has filed the present Revision Petition before this Court and has obtained an order of status-quo dated 23.12.2010, pending Civil Revision Petition. The respondents have filed their written statement in the O.S. No. 82 of 2010, before the trial court. The order of status -quo already granted by this Court, also remains to continue.

7. In the above said circumstances, I am inclined to pass the following order :-

a) The order of status quo dated 23.12.2010, granted by this Court

in C.R.P. No. 4651 of 2010 will continue, till the disposal of the Suit.

- b) The Subordinate Judge, Udumalpet is directed to dispose of the suit in O.S. No.82 of 2010, pending on its file, independently, in accordance with the provisions of law, within a period of four months from the date of receipt of a copy of this order.

8. The Civil Revision Petitions are allowed, with the above observations. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

29.04.2016

Index: Yes/No
avr

To

The Subordinate Judge
Udumalpet.

D. KRISHNAKUMAR J.,

avr

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