

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM :

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

Civil Revision Petition (PD) Nos.4536 & 4537 of 2013
and M.P.No.1 of 2013 in CRP.No.4536 of 2013

K.Kesavan

.. Petitioner in
both petitions

Vs.

K.Mahalingam

.. Respondent in
both petitions

Civil Revisions filed under Article 227 of Constitution of India against the order dated 27.8.2010 in CMA.Nos.3 & 4 of 2009 on the file of the Subordinate Judge, Ranipet, Vellore District confirming the order dated 17.4.2009 in I.A.Nos.18 & 41 of 2009 in O.S.No.14 of 2009 on the file of the District Munsii-cum-Judicial Magistrate, Arcot.

For Petitioner : Mr.T.Karunakaran

For Respondent : Mr.P.Mani

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These revisions are directed against common order in C.M.A.Nos.3 and 4 of 2009 dated 27.08.2010 on the file of Subordinate Judge, Ranipet, confirming the order in I.A.Nos.18 and 41 of 2009 in O.S.No.14 of 2009 dated 17.4.2009 on the file of the

District Munsif-cum-Judicial Magistrate, Arcot. The petitioner herein is the plaintiff in the suit.

2. The plaintiff has filed the suit for permanent injunction restraining the defendant, their men, agents and servants from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit properties. Along with the suit, plaintiff has filed I.A.No.18 of 2009 for grant of ad-interim injunction. The trial Court has also granted ad-interim injunction.

3. After service, the respondent entered appearance and filed I.A.No.41 of 2009 seeking to vacate the interim injunction.

4. Both the petitions were taken up together and no oral evidence was adduced on both sides, however, on the side of the respondent. Ex.P1 to P3 were marked.

5. Upon consideration of the rival submissions and upon perusing the documents, the trial Court allowed I.A.No.41 of 2009 and dismissed I.A.No.18 of 2009 , vide order dated 17.4.2009 and ultimately, the interim injunction granted stands vacated.

6. Aggrieved by the order passed in I.A.Nos.18 and 41 of 2009, the petitioner has filed C.M.A.Nos.3 and 4 of 2010 before the Subordinate Judge, Ranipet. The lower appellate Court, confirmed the order of the trial Court and dismissed both Civil Miscellaneous Appeals holding that through Ex.P1, the respondent herein acquired right of $\frac{1}{4}$ share in the well and 5 HP pumpset. Since the respondent validly acquired right of share in the suit well and its pumpset and the petitioner has not made out prima facie case, no injunction can be granted. Finally, the lower appellate Court dismissed both the appeals. Aggrieved by the order passed by the lower appellate Court, the petitioner has filed these revisions.

7. Learned counsel for the petitioner submits that the Courts below failed to consider the suit document No.3 dated 12.8.2015 executed by the petitioner's father and two sisters in favour of the petitioner, instead arrived at a conclusion that the petitioner suppressed Ex.P1, sale deed dated 12.1.1987 executed by the father of the petitioner. He further submits that the respondent is having right for irrigation of water alone on Monday and Thursday in suit schedule property serial No.8. He would submit that based on the release deed dated 12.8.2005, the petitioner has sought interim injunction, which the Courts below failed to consider the same.

8. On the other hand, the learned counsel for the respondent would submit that by suppressing the material facts, the petitioner has obtained *exparte* injunction and after serving notice, the respondent filed petition to vacate the *exparte* injunction. Upon considering the documents produced by the respondent, the trial Court has rightly vacated the *exparte* injunction granted in I.A.No.18 of 2009. He would further submit that the lower appellate Court has also rightly held that the petitioner has not made out *prima facie* case. Finally, he submits that the order under revision is well considered one, which warrants no interference.

9. I heard Mr.T.Karunakaran, learned counsel for the petitioner and Mr.P.Mani, learned counsel for the respondent in both the Civil Revision Petitions and perused the materials available on record.

10. There is no controversy that the suit property was allotted to the share of petitioner's father in the family partition and subsequently, the plaintiff acquired right over the same.

11. On a perusal of the pleadings, I find that the defendant claims right of drawing water to his lands from the petitioner's land based on Ex.P1, conveyance deed executed by the petitioner's father Kannan in favour of the respondent Mahalingam for a consideration of

Rs.2500/-. The trial Court was right in coming to the conclusion that the petitioner has suppressed the material document namely existence of Ex.P1-conveyance deed executed by the father of the petitioner in favour of respondent.

12. For grant of temporary injunction the plaintiff has to satisfy three elements viz., (i) *prima facie case*; (ii) balance of convenience and (iii) irreparable injury. Admittedly, the petitioner herein has not shown any documents before the trial Court so as to grant temporary injunction.

13. In its order in paragraph 10, the trial Court observed that "*in this case Ex.P1 the defendant acquired right of 1/4 share in the well and 5 HP pumpset; since defendant validly acquired right of share in the suit well and its pumpset, no injunction can be granted against him, thus on the petitioner side not made out prima facie case, if the injunction is granted it will amounts denial of the right acquired by defendant under Ex.P1 by valid consideration. In the circumstances, it is answered that the petitioner is not entitled for temporary injunction*".

14. As stated supra, the petitioner has failed to satisfy the elements of *prima facie case*, balance of convenience and irreparable

loss to enable the Court to grant temporary injunction. In the absence of any documents to show that the petitioner established *prima facie* case, the trial Court was right in vacating the interim injunction and that the lower appellate Court was also right in affirming the said order. The lower appellate court after re-appreciating the documents in particular Ex.P1 concurred with the order of the trial court.

15. From the order of the lower appellate Court, I find that the discretion conferred in it has been rightly exercised by the lower appellate Court and I do not find any infirmity in it.

16. In the result:

(a) both the Civil Revision Petitions are disposed, by confirming the orders passed in CMA.Nos.3 and 4 of 2009, dated 27.08.2010, on the file of the learned Subordinate Judge, Ranipet, Vellore District;

(b) the trial Court is hereby directed to dispose of the suits within a period of three months from the date of receipt of a copy of this order, without giving any adjournments to either parties.

(c) both the parties are hereby directed to give their fullest co-operation for early disposal of the suits. No costs. Consequently, M.P.No.1 of 2013 is closed. It is made clear,

any observation made in order touching rights of the parties in the suit schedule mentioned properties are only *prima facie* observation and the same will not prevent the trial Court in deciding the suits independently.

19.12.2016

Note: Issue order copy on 13.02.2018

vs

Index : Yes

Internet : Yes

To

1. The District Munsif-cum-Judicial Magistrate,
Arcot.

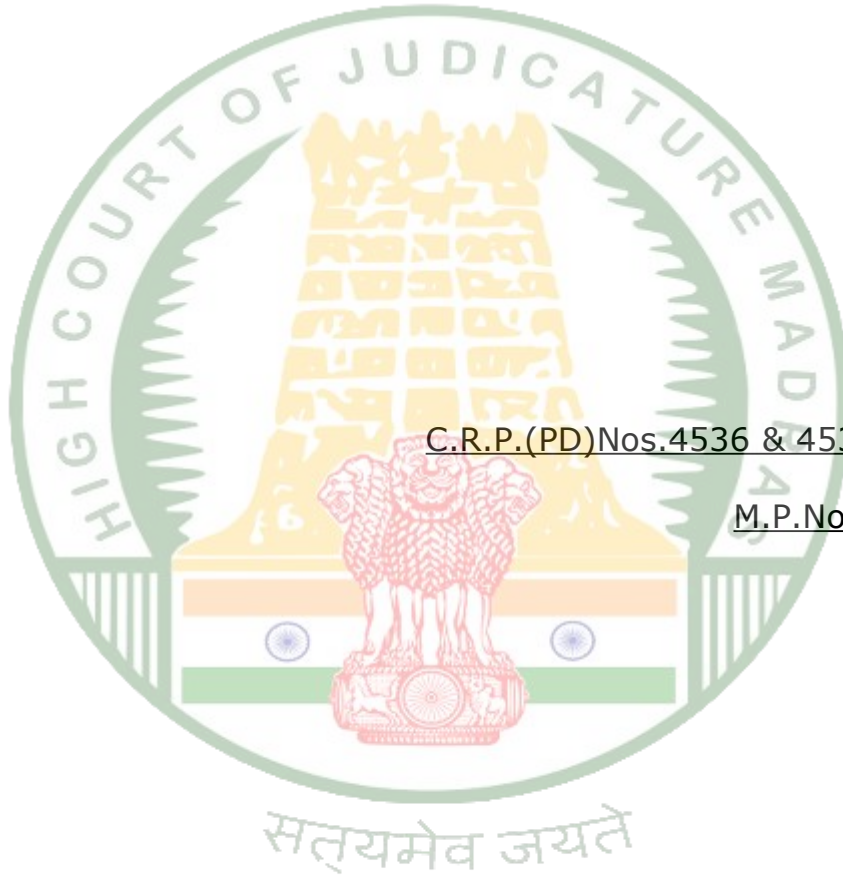
2. The Subordinate Judge, Ranipet.



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M.V.MURALIDARAN,J.

VS



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