



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

C.R.P(MD)No.1228 of 2015 (PD)

and

M.P(MD)No.1 & 2 of 2015

Karunakaran Nair

.. Petitioner

Vs.

V.Jeyanthi

.. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to struck off the plaint in O.S.No.277 of 2014, on the file of the Learned Principal District Munsif Court, Padmanabhapuram, Kanyakumari District.

For Petitioners : Mr.K.Mahendran

For Respondent : Mr.C.Godwin

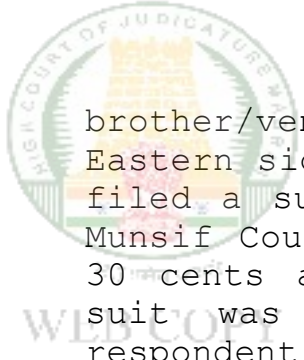
ORDER

This petition has been filed by the petitioner to struck off the plaint in O.S.No.277 of 2014, on the file of the Principal District Munsif, Padmanabhapuram, Kanyakumari District.

2.By consent of both parties, the Civil Revision Petition itself is taken up for final disposal.

3.The petitioner is the defendant whereas the respondent is the plaintiff filed suit in O.S.No.277 of 2014 claiming 20 feet pathway measuring 3 cents in plaint B-schedule property to reach her A-schedule property from the southern road and for permanent injunction restraining the petitioner from closing or obstructing by way of making any construction over the plaint B-schedule property and in any way interfering with use of plaint B-schedule property by the respondent and her family members through the plaint B-schedule property from the southern Marthandam to Pechipparai Road to reach the plaint A-schedule property. According to the respondent, the petitioner is obstructing his use of pathway. Therefore, she filed the suit. The petitioner filed the written statement in the suit and contesting the same. While the suit is pending, the petitioner filed the above Civil Revision Petition under Section 227 of the Constitution of India to strike off the plaint in O.S.No.277 of 2014 pending on the file of the Learned Principal District Munsif Court, Padmanabhapuram.

4. According to the petitioner, originally the petitioner and his brother/vendor of the respondent jointly owned 60 cents. The partition deed, the petitioner was allotted 30 cents in the western side of the property numbered as Plot No.2 and his



brother/vendor of the respondent was allotted 30 cents in the Eastern side of the property numbered as Plot No.1. The petitioner filed a suit in O.S.No.185 of 1988 on the file of the District Munsif Court, Padmanabhapuram for demarcation of his western side 30 cents as per the partition deed, dated 22.12.1973. The said suit was decreed. Against that, his brother/vendor of the respondent herein filed A.S.No.96 of 1996, on the file of the Sub Court, Padmanabhapuram. The said appeal was allowed on 10.10.2002 setting aside the judgment and decree passed in O.S.No.185 of 1988. Against the said judgment and decree, the petitioner filed S.A.No.679 of 2003 before this Court. This Court granted interim injunction. Subsequently, it was made absolute by the order, dated 18.09.2003 in C.M.P.No.6514 of 2003 and 6515 of 2003 in S.A.No.679 of 2003 and the same is pending. The issue involved in the Second Appeal pending before this Court as well as the issue involved in the present suit in O.S.No.277 of 2014 are one and the same. In the circumstances, the learned District Munsif erred in taking the suit on file and therefore, prayed for strike off the plaint as per the Order 7 Rule 11(D) of the Code of Civil Procedure.

5.The respondent filed counter along with vacate stay petition and submitted that the issue involved in the previous suit in O.S.No.185 of 1988 and the present suit in O.S.No.277 of 2014 is not one and the same. The earlier suit is for demarcation of western side of the property measuring to an extent of 30 cents, which was allotted to the petitioner and his brother. The respondent has purchased 10.485 cents from the brother of the petitioner from the property measuring 30 cents, which was allotted to his brother. The respondent has nothing to do with the demarcation and putting up the compound wall on the western side of the property. The respondent is claiming right of the pathway to reach 'A' schedule property and prayed for dismissal of the Civil Revision Petition.

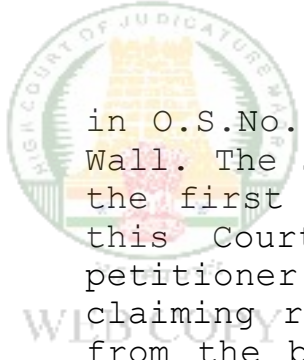
6.I have heard Mr.K.Mahendran, learned counsel appearing for the petitioner and Mr.C.Godwin, learned counsel appearing for the respondent and also carefully perused the entire materials on record.

7.The petitioner is claiming relief of striking off the plaint as per Order 7 Rule 11(d) of CPC. The said Rule is reads as follows:-

“(d) where the suit appears from the statement in the plaint to be barred by any law”

8.The petitioner is claiming the relief on the ground that the issue involved in O.S.No.277 of 2014 filed by the respondent is same as that of the issue involved in O.S.No.185 of 1988 filed by the respondent against his brother/vendor of the respondent.

9.From the materials it is seen that the petitioner filed suit



in O.S.No.185 of 1988 for demarcation and for putting up compound Wall. The said suit was decreed. Subsequently, it was set aside by the first appellate Court. Now the said issue is pending before this Court in S.A.No.679 of 2003. The issue raised by the petitioner has not attained finality. Further, the respondent is claiming right of pathway to reach his property purchased by her from the brother of the petitioner. In O.S.No.277 of 2014. Trial Court has to decide whether the respondent has right of pathway as claimed by her in the plaint. This issue is not directly or substantially in issue in the suit in O.S.No.185 of 1988 filed by the petitioner. In view of this fact, the Civil Revision Petition is devoid of merits and is liable to be dismissed.

10.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Principal District Munsif Court,
Padmanabhapuram, Kanyakumari District.

+One CC to M/s.Mahendran, Advocate in SR.No.14742
+One CC to M/s.Godwin, Advocate in Sr.No.14236

CN/GJB-DP/AR1/28.03.2016/3P-4C

C.R.P (MD) No.1228 of 2015 (PD)