



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2016

CORAM

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.2198 of 2015 (PD)

and

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

1.Amathu Jappara Fathima
2.Habeep Rahman
3.Salhaththu Sabiha
4.Hamsathu Noohiya
5.Ahamed Jamaludheen

... Petitioners

Vs.

1.Fazilla Azad
2.Ahamed Shahir
3.Musifura Jalal
4.Jumailath Rashitha
5.Muhammed Paakkir

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to struck off the plaint in O.S.No.95 of 2015 on the file of the Sub Court, Ramanathapuram.

For Petitioners

:Mr.S.Balamurugan

For Respondents

:Mr.V.Sitharanjandas

ORDER

The petitioners are the defendants and the respondents are the plaintiffs in the suit. The respondents filed a suit in O.S.No.95 of 2015. The petitioners filed the present C.R.P under Article 227 of the Constitution of India to struck off the plaint in O.S.No.95 of 2015 on the file of the Subordinate Court, Ramanathapuram.

2.The petitioners filed a suit in O.S.No.91 of 2015 on the file of the Subordinate Court, Ramanathapuram for a declaration and permanent injunction that the suit property belongs to them and for temporary injunction restraining the respondents and their agents from interfering with their possession and enjoyment of the suit property. They also filed I.A.No.378 of 2015 for temporary injunction restraining the respondents from interfering with their possession till the disposal of the suit. The learned Judge by order dated 09.09.2015, granted interim injunction.

3.The respondents filed a suit in O.S.No.95 of 2015 against the petitioners in the very same Court for a declaration that the very same property belongs to them and for permanent injunction restraining the petitioners and their agents from interfering with their possession as well as restraining the petitioners from altering the nature of the property and not to put up any construction. They also filed I.A.No.388



of 2015 for interim injunction, pending suit. The learned Judge on 15.09.2015 ordered Status Quo to be maintained.

4.The petitioners have filed the present C.R.P to struck off the plaint in O.S.No.95 of 2015. They also filed M.P.No.1 of 2015 to suspend the interim order of Status Quo granted in I.A.No.388 of 2015 in O.S.No.95 of 2015. This Court, by order dated 12.10.2015, suspended the order of status quo for four weeks.

5.The learned counsel for the petitioners contended that the filing of suit in O.S.NO.95 of 2015 by the respondents is abuse of process of law, while the suit in O.S.No.91 of 2015, filed by the petitioners is pending with regard to the very same suit property. The petitioners filed caveat petition and the learned counsel for the respondents also made an endorsement in the petition that "no caveat filed or served". Whiles, the registry also made an endorsement that "no caveat". In the circumstances, I.A.No.388 of 2015 in O.S.No.95 of 2015 was heard by the learned Judge, without notice to the petitioners and on 15.09.2015 ordered Status Quo, while interim injunction granted in I.A.No.378 of 2015 in O.S.No.91 of 2015 filed by the petitioners was subsisting. Granting order of status quo is arbitrary and un-sustainable in law. The respondents ought to have filed petition to vacate interim order, if they were aggrieved instead of filing of suit. The learned Judge committed an error apparent on the face of record warranting interference by this Court.

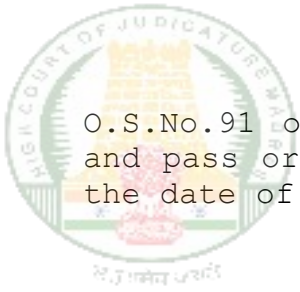
5.I have heard Mr.S.Balamurugan, learned counsel appearing for the petitioners and Mr.V.Sitharanjandas, learned counsel for the respondents and carefully perused the entire materials on record.

6.A reading of complaints in O.S.Nos.91 of 2005 and 95 of 2005 reveals that both the petitioners and the respondents have prayed for declaration that the suit property belongs to them and for permanent injunction. In view of the relief sought for by the respondents, it cannot be said that the suit in O.S.No.95 of 2015 filed by them in abuse of process of law. In the circumstances, the contention of the learned counsel for the petitioners that the respondents ought to have filed an application to vacate interim injunction and they are not entitled to file a separate suit, is not acceptable. The order of status quo granted by the learned Judge on 15.09.2015 is in order. The learned Judge considered the contentions of the respondents that the petitioners taking advantage of interim injunction have started demolishing the super structure in the suit property and granted the order of status quo.

7.The power conferred under Article 227 of the Constitution of India is a special discretionary power which has to be exercised sparingly. The Court cannot exercise the power mechanically and has to exercise the power judicially.

8.In the facts and circumstances of the case, the petitioners are not entitled to get the relief sought for in the C.R.P.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected M.P is also closed. The learned Sub-Judge, Ramanathapuram is directed to consider the I.A.No.378 of 2015 in



O.S.No.91 of 2015 and I.A.No.388 of 2015 in O.S.No.95 of 2015 together and pass orders on merits as per law, within a period of two months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

WEB COPY /True copy/

Sub Assistant Registrar

To
The Subordinate Judge, Ramanathapuram.

+1 CC to M/s.S.Balamurugan, Advocate, SR No.10585
+1 CC to M/s.V.Sitharanjandas, Advocate, SR No.10561

C.R.P. (MD) .No.2198 of 2015 (PD)
and
M.P. (MD) .No.1 of 2015
24.02.2016

Ns
SH/AN-MP:04.04.2016:3P/4C