

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) Nos. 1193 to 1195 of 2017
and
Caveat No. 751 of 2017

1. K. Ramadoss
 2. V. Radhakrishnan (Deceased)
 3. R. Suganthi
 4. V. Ananthi
 5. A. AnuRekha
 6. P. Anitha
- ... Petitioners in all CRPs

VS.

1. K. Ramesh
 2. K. Rajendiran
- .. Respondents in all CRPs

These Civil Revision Petitions are filed under Section 115 of the Civil Procedure Code to set aside the fair and decreetal orders made in C.M.P Nos. 1341, 1426 and 357 of 2016 in A.S No.58 of 2016 dated 09.12.2016 on the file of VI Additional City Civil Court, Chennai and pass further orders.

For Petitioners : Mr. A.R.L. Sundaresan, Senior Counsel
for Mr.Venkataswamy Babu

For Respondents : Mr.G. Anbumani
Caveators for Mr. K. Manikandan

ORDER

These Civil Revision Petitions arise against the Judgment and decrees made in C.M.P Nos. 1341, 1426 and 357 of 2016 in A.S No.58 of 2016 dated 09.12.2016 on the file of VI Additional City Civil Court, Chennai.

2. Brief facts of the case are as follows :-

The respondents herein filed a suit in O.S. No. 3413 of 1993 on the file of the III Assistant City Civil Court at Chennai against the petitioners, for declaration and hand over the vacant possession of the suit property. The petitioners filed a suit in O.S. No. 5333 of 1993 before the same Judge, for permanent injunction. Both the suits were tried together and the learned trial court decreed the suit in favour of the respondents herein and dismissed O.S. No.5333 of 1993 filed by the petitioners herein. Against the said judgment and decree, the petitioners preferred an appeal

in A.S. No.58 of 2016 before the VI Additional City Civil Court, Chennai. The petitioners herein also filed an application in C.M.P No.357 of 2016, seeking for interim stay of the judgment and decree passed in the aforesaid suit, pending disposal of the appeal suit. Another application in C.M.P No. 1341 of 2016 was filed by the petitioners to remand the suit back to the trial court and another application in C.M.P No. 1426 of 2016 to re-issue warrant of appointment of Advocate Commissioner. Learned Appellate Court, after hearing the parties concerned, passed a common order and dismissed the aforesaid Miscellaneous Applications, on 09.12.2016. So far as C.M.P No.357/2016 is concerned, interim stay was granted till 04.01.2017 and closed the C.M.P Nos. 1341/2016 and 1426/2016. Against the aforesaid orders passed in the Miscellaneous petitions, the present revision petitions are filed by the petitioners.

3. According to learned counsel for the petitioners, the Lower Appellate Court has passed an order in C.M.P No.357 of 2016, granting stay in the operation of the judgment and decree passed in O.S. No. 3413 of 1993 dated 11.12.2015, by the III Assistant Judge, City Civil Court, till 04.01.2017 and posted the main appeal on 04.01.2017 for arguments. Since the petitioners filed Transfer C.M.P Nos. 837 and 838 of 2016 and

obtained an order of interim stay by this Court on 04.01.2017, the appeal suit was not disposed on 04.01.2017. In the meanwhile, the respondents filed execution proceedings in E.P. No.975 of 2016 and the petitioners filed Transfer O.P No.20/2017 seeking to transfer the execution proceedings from the file of IX Assistant City Civil Court, Chennai to some other competent court. But, the same was dismissed by the Principal Judge, City Civil Court, Chennai on 01.03.2017. Further, the interim order already granted by the Lower Appellate Court was not extended beyond 04.01.2017 and hence prays to allow the CRP No.1195 of 2017. As far as C.R.P No.1194 of 2017 filed against the order passed in C.M.P No.1341/2016 is concerned, seeking for re-issuance of warrant of appointment of Advocate Commissioner, the same has to be allowed to note down the physical features of the suit property. The C.R.P No.1193 of 2016 against the order passed in C.M.P No.1341/2016, which has been filed praying to remand the matter back to the trial court for fresh consideration. Learned counsel for the petitioners submitted that in the interest of justice, these petitions ought to have been allowed.

4. At the time of arguments, with the consent of both the parties, without going into the merits of the case, this Court is inclined to pass the

following directions:

- i. the interim stay granted by the Lower Appellate Court in C.M.P No. 357 of 2016 in A.S. No. 58 of 2016 on 09.12.2016, is extended till the disposal of the appeal suit.
- ii. the impugned order dated 09.12.2016 passed in C.M.P No.1341 of 2016 is set aside and the VI Additional City Civil Court, Chennai is directed to take up the C.M.P along with the appeal suit.
- iii. the order passed in C.M.P No.1341 of 2016 dated 09.12.2016 is set aside and the same has to be considered along with the appeal suit.
- iv. The VI Additional City Civil Court, Chennai is directed to dispose of the appeal suits in A.S.No.58 of 2016 and 184 of 2016, as expeditiously as possible, preferably within a period of three months, i.e., August 2017.
- v. Both the parties are directed to co-operate with the proceedings of the Appeal Suit, during the hearings.

5. All the Civil Revision Petitions are disposed of, on the above terms. Consequently, the Caveat Petition is closed. No costs.

27.04.2017

D.KRISHNAKUMAR, J.

avr

Index : yes / no

Speaking Order/ Non speaking order

avr

To

The VI Additional City Civil Court,
Chennai.

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