

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

C.R.P.(PD) No.1226 of 2017
and C.M.P.Nos.5800 and 5801 of 2017

P.G.Jayapathi

.. Petitioner

..VS..

1.P.Srinivasan

2. P.Sundaravinayagam

3. S.Gnanasowndari

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of Civil Procedure Code, against the order and decree dated 17-02-2016 made in C.M.A.No.02/2014, on the file of the Sub Court, Arakkonam in confirming the order and decree dated 07-11-2012, made in I.A.No.166/2012 in O.S.No.36/2012, on the file of the District Munsif Court, Sholinghur.

For Petitioner : Mr.A.Gouthaman

ORDER

Plaintiff in the trial Court is the revision petitioner before me.

2.For the sake of convenience and clarity, parties in this revision petition are referred to by their respective ranks in the suit in the trial Court. Respondents 1 to 5 before me are defendants 1 to 5 respectively in the trial Court.

3.It is the case of the plaintiff that he became a lessee under defendants 1 and 2 in suit property. It is the case of the plaintiff that he is running a hospital there. It is the further case of the plaintiff that the defendants are disturbing his possession. It is to be stated that defendants 1 and 2 are the lessors, plaintiff is lessee under them qua demised property/suit property. Defendant No.3 is the wife of defendant No.1. Defendants 4 and 5 are subsequent purchasers.

4.Suit is a very simple suit with a straight forward prayer. The prayer in the suit is not to evict the plaintiff from the suit property de hors due process of law. Of course, there are incidental and ancillary prayers, which are not of much consequence.

5.Pending suit, plaintiff took out an application in I.A.No.166 of 2012 invoking order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred as 'C.P.C.' for brevity) with a prayer to protect his

possession qua demised property/suit property. After elaborate enquiry and full contest, trial Court allowed the injunction application partly. When I say allowed partly, I say so as a perusal of the order of the trial Court shows that injunction has been granted with regard to land and superstructure alone and not the entire suit schedule property which includes adjacent vacant land also. In other words, the prayer for injunction in respect of superstructure and the land on which the superstructure stands was acceded to, but with regard to the adjacent vacant land ad-measuring 1666 sq.mtrs it was negatived. The trial Court came to the conclusion that possession of the plaintiff qua adjacent vacant land has not been established in any manner.

6. Not satisfied, plaintiff filed a Civil Miscellaneous Appeal being C.M.A.No.2 of 2014 on the file of the Subordinate Judge's Court, Arakkonam.

7. After full contest and detailed enquiry, the first appellate Court, confirmed the order of the trial Court and dismissed the C.M.A.

8. Not satisfied, revision petitioner has filed the instant civil revision petition before this Court calling in question the order dated 17.02.2016 made in C.M.A.No.2 of 2014.

9. I have heard the learned counsel for the revision petitioner, who as stated above, is plaintiff before the trial Court.

10. I have also perused the order of the trial Court in I.A.No.166 of 2012 and the order of the first appellate Court in C.M.A.No.2 of 2014. The orders have been passed based on the fact situation that was projected before the respective Courts. I find no infirmity or illegality in the orders. Particularly, I find no infirmity or illegality in the order in C.M.A.No.2 of 2014.

11. Therefore, there is no ground to interfere with the order dated 17.02.2016 in C.M.A.No.2 of 2014.

12. However, considering the fact that the suit is simple suit with a straight forward prayer to not to evict the plaintiff from the suit property de hors due process of law, this Court deems it appropriate to direct the trial Court (District Munsif Court, Sholinghur) to dispose off the suit viz., O.S.No.36 of 2012 (District Munsif Court, Sholinghur) within three months from the date of receipt of a copy of this order. In giving this direction, I have also taken into the fact that it was submitted before me that in the trial Court, pleadings are complete, issues have been framed and the suit is ripe for trial.

13. Though I have confirmed the orders made by the trial Court and the first appellate Court in C.M.A., considering the nature of the suit and considering the nature of the order I have passed, no harm or prejudice would be caused to the parties, if all the parties to the revision petition are directed to maintain status-quo as of today qua the suit property till the disposal of the suit within the above said time frame.

14. As I am disposing off the civil revision petition at the admission stage without ordering notice to the respondents, it may be necessary to communicate a copy of this order to all the respondents.

15. Civil Revision Petition is disposed off on the above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

04.04.2017

Index:Yes/No

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To

1. The District Munsif Court, Sholinghur.
2. The Sub-Court, Arakkonam.

M.SUNDAR, J.

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