

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1257 of 2017
and CMP.No.5887 of 2017

Rahuman Beevi

.. Petitioner

Vs

J.P.Mohammed Sharif
Rep. by his Power of Attorney Agent
Mr.M.S.Mohammed Ali

.. Respondents

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, against the fair and decretal order dated 25.01.2017 made in I.A.No.84 of 2016 in O.S.No.72 of 2012 on the file of District Munsif Court at Tiruvarur.

For Petitioner : Mr.J.Nandagopal

ORDER

The revision petitioner is the defendant and the respondent is the plaintiff.

2. The respondent/plaintiff represented by his Power Agent, filed a suit in O.S.No.74 of 2012 on the file of District Munsif Court, Thiruvarur, seeking permanent injunction restraining the defendant or his persons or agents from causing any disturbance to the residents of the plaintiff's colony house in using the common pathway. The respondent also filed a interlocutory application praying for interim injunction. Interim injunction was granted pending disposal of the suit by the trial Court.

3. Aggrieved by the interim order passed by the trial Court, the defendant has filed CMA.No.01 of 2013 on the file of the Sub Court, Tiruvarur. The said CMA was dismissed by the Appellate Court, confirming the order of interim injunction and injunction was ordered to be in force till the disposal of the suit. The Appellate Court also directed the learned trial Judge to dispose of the suit within six months from the date of receipt of a copy of that order. At that stage, the petitioner/defendant filed an application in I.A.No.84 of 2016 in O.S.No.74 of 2014 under Order VII, Rule 11(A) CPC., to reject the plaint, on the ground that the plaint does not disclose a cause of action to file the suit for permanent injunction.

4. According to the petitioner/defendant, the relief sought for by the respondent/plaintiff is vague and it is not clear. The respondent is not the owner of the property at the time of filing of the suit, as he had settled the property in favour of his grandchildren. Moreover, the suit was filed by the power agent on behalf of the respondent/plaintiff and thus it is not maintainable. Even the suit itself does not disclose any cause of action, it should be dismissed.

5. The respondent/plaintiff filed counter and stated that since the petitioner/defendant is causing obstruction in using the common pathway, the plaintiff has filed the suit seeking relief. Thus, this appears to be a cause of action in filing the suit.

6. The learned trial Judge on considering the averments made in the plaint and in the affidavit filed in support of the interim application, had granted interim injunction to the plaintiff. The same was also confirmed by the Appellate Court. It is admitted that the plaintiff is in Singapore, and the suit property was maintained by his Power Agent and therefore, his Power Agent has the right to file a suit. The respondent/plaintiff filed a complaint before the Town Police Station, Thiruvarur against the petitioner, in connection with which, both the parties were called for enquiry and they both agreed that they will approach the Civil Court for their remedy. Thus, the plaint clearly discloses the cause of action.

7. The trial Judge, considering the averments made in the plaint, affidavit and counter affidavit and in view of the arguments made by the learned counsels, dismissed I.A.No.84 of 2016 in O.S.No.74 of 2012 on the file of the District Munsif Court, Thiruvarur, holding that the plaint disclose cause of action. Against the said order of dismissal, the present Civil Revision Petition is filed.

8. Heard the learned counsel appearing for the revision petitioner. The grievance of the petitioner is that the respondent is not the owner of the suit property, as he had settled the property in favour of his grandchildren and suppressing this fact of settlement, he had filed the suit. In the said circumstances, no cause of action has arisen for the

respondent to maintain the suit.

9. The above contention is untenable. The plaint can be rejected only if the plaint does not disclose any cause of action or the suit is barred by any law in force. While considering the application filed under Order VII Rule 11 CPC. to reject the plaint, the only criteria that need to be considered is whether the averment in the plaint and documents relied on by the plaintiff disclose a cause of action. The contention of the defendant and the documents relied on by the defendant cannot be considered for rejection of the plaint.

10. The learned Judge considered the averments in the plaint and also the complaint given by the respondent/plaintiff against the petitioner/defendant before the Town Police Station, Thiruvavur, where they agreed to approach the Civil Court for their remedy, which proves that there is a cause of action. Hence, the learned Judge was correct in dismissing the application filed by the petitioner to reject the plaint.

11. This Court does not find any irregularity or illegality in the order passed by the trial Judge warranting interference by invoking the revisional jurisdiction under Article 227 of the Constitution of India.

12. Accordingly, the Civil Revision Petition is dismissed. No costs.

ds

05.04.2017

To:
The District Munsif Court
Tiruvarur.

V.M.VELUMANI,J

ds

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