

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1334 of 2017
& C.M.P.No.6214 of 2017

1.K.Sakunthala
2.K.Doss
3.K.Vasu
4.K.Rosaiya
5.K.Yesu

.. Petitioners

Vs.

1.A.A.Arughathoss
2.V.Kasthuri
3.Thiagarajan
4.N.Balakrishnan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.02.2017 made in I.A.No.256 of 2016 in O.S.No.83 of 2012 on the file of the III Additional District Court, Poonamallee, Thiruvellore District.

For Petitioners : Mr.V.B.Thirupathi Kumar

ORDER

This civil revision petition has been filed against the fair and decreetal order dated 21.02.2017 made in I.A.No.256 of 2016 in O.S.No.83 of 2012 on the file of the III Additional District Court, Poonamallee, Thiruvellore District.

2. Petitioners are defendants 3 to 7, first respondent is the plaintiff, respondents 2 and 3 are the defendants 1 & 2 and fourth respondent is eighth defendant in O.S.No.83 of 2012. First respondent filed the suit for declaration of title, delivery of possession and for permanent injunction. The second petitioner filed written statement and is contesting the suit. Trial commenced. First respondent was examined as P.W.1. When the case was posted for cross-examination of the first respondent, petitioners filed I.A.No.256 of 2016 to decide the issue of maintainability and whether the suit is hit by principles of resjudicata as per Section 11 of C.P.C.

3. According to the petitioners, first respondent filed E.A.No.136 of 2005 for restraining the construction made in the suit property and hand over the possession to him. The said appeal

was allowed on 14.12.2009. Challenging the same, the petitioners and respondents 2 and 3 filed C.M.A.No.2 of 2010 and the same was allowed on 21.10.2011. First respondent did not challenge the order passed in C.M.A. by initiating further proceedings and the said order binding on the first respondent and thus, prayed for to decide the issue of maintainability as a preliminary issue.

4. First respondent filed counter affidavit opposing the said application and submitted that P.W.1 was examined on 30.10.2014 and the petitioners have filed number of applications to drag on the proceedings. The petitioners did not cross-examine P.W.1.

5. Learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that already necessary issues have been framed with regard to the objections raised by the petitioners and issues raised by the petitioners are mixed questions of fact and law, which can be decided only after conclusion of trial.

6. Against the order of dismissal dated 21.02.2017 made in

I.A.No.256 of 2016, the present civil revision petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners and perused the materials available on record.

8. The petitioners have filed the application for deciding the three issues as to whether the suit is maintainable, barred by limitation and hit by the principles of resjudicata as preliminary issues.

9. From the materials available on record, it is seen that the petitioners have come out with the present application after commencement of trial and after examination of first respondent as P.W.1. The petitioners have delayed the trial without cross-examining P.W.1. The learned Judge has held that necessary issues were already framed with regard to the objections raised by the petitioners. The plea for deciding the issues as preliminary issues must be raised at the earliest point of time. An issue which is a mixed question of fact and law cannot be decided as preliminary issue in a summary manner and it can be decided only after the

completion of trial by appreciating the evidence let in by the parties.

10. The learned Judge has exercised his power conferred on him and rightly dismissed the application. There is no irregularity or illegality warranting interference by this Court with the order of the learned Judge, dated 21.02.2017.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2017

Index : Yes/No

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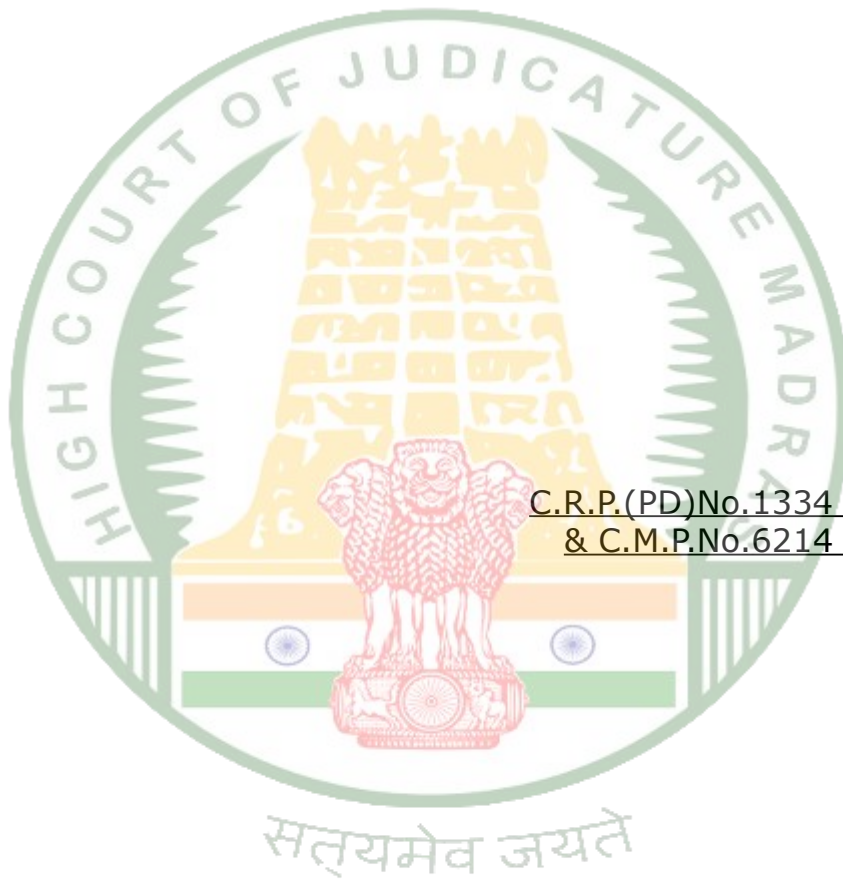
To

III Additional District Court, Poonamallee.

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V.M.VELUMANI, J.

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