

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) Nos.1377 & 1452 of 2017
and 6410 & 6754 of 2017

C.R.P.(PD).No.1377 of 2017

1.M.Charuhsan

2.M.S.Ranjith (Builder)

... Petitioners

..Vs..

1.S.E.Thangavel

2.P.Karikalan

... Respondents

C.R.P.(PD).No.1452 of 2017

1.M.Charuhsan

2.M.S.Ranjith (Builder)

... Petitioner

..Vs..

S.E.Thangavel

Common Prayer:- Civil Revision Petitions filed under Article 227 of Constitution of India to set aside the order and decretal order dated 21.11.2016 made in I.A.No.5194 of 2016 in in O.S.No.42 of 2014 and I.A.No.5196 of 2016 in O.S.No.497 of 2014 and allow the said applications with costs.

For Petitioners

(in both CRPs)

: Mr.Ramesh Kumar

For Respondent/Respondents : Mr.Jaganathan

(in both CRPs)

COMMON ORDER

These Civil Revision Petitions arise out of the decretal order dated in I.A.No.5194 of 2016 in O.S.No.42 of 2014 and I.A.No.5196 of 2016 in O.S.No.497 of 2014 respectively on the file of the XIII Assistant Judge, City Civil Court, Chennai. Since the issues involved in both the Civil Revision Petitions are one and the same, they are taken up together and a common order is passed by this Court.

CRP (PD) No.1377 of 2017 :

2. The petitioners are the defendants 2 and 3 and respondents are the plaintiffs. The short facts in this revision is that the respondents/plaintiffs are the absolute owners of the suit schedule property. The first respondent purchased the "A" schedule property from one Suryagandhi on 5.10.1984, and was registered vide Doc.No.2918 of 1984, which clearly states that on the Western side of the property is a general pathway. Accordingly, the second respondent is stated to have purchased the "B" schedule property from the Slum Clearance Board on 17.2.2006, and the same is registered vide Doc.No.1197/06, which clearly states that on the eastern side of the property is a general

pathway.

2.1. The first defendant purchased a property from the Tamil Nadu Slum Clearance Board bearing Plot No.120, Door No.20, Bharathiyar 4th Street, Lakshmipuram, Thiruvanmiyur, Chennai on 23.10.2007, in which there was no pathway found. The first defendant, who is the mother of the second defendant had settled the property in favour of his son, the second defendant/first petitioner. The third defendant/second petitioner is the builder, with whom the second defendant had entered into a joint venture agreement for putting up the flats. It is stated that the second respondent is encroaching the general pathway by putting up a gate, car parking area and a sump in the general pathway. Hence, the suit in O.S.No.42 of 2014 has been instituted by the respondents/plaintiffs seeking mandatory injunction. It is also stated in the plaint that the 1st defendant had approached the Chairman of Slum Clearance Board and made a representation to register the sale deed including the general pathway and accordingly the CMDA has rectified the plan approval.

CRP (PD) No.1452 of 2017 :

3. The petitioners herein are the defendants 2 and 3

and the respondent is the sole plaintiff. The plaintiff (1st plaintiff in O.S.No.42 of 2017) has filed the suit in O.S.No.497 of 2014 on the file of the XIII Assistant City Civil Court, Chennai against the defendants 1 to 12 (the defendants 1 to 3 herein are the defendants in O.S.No.42 of 2017). The case of the respondent/plaintiff is that the first defendant knowing full well that the lane is common to all erected a grill gate on the northern side thereby blocking the common land and started claiming ownership of the common lane. The suit is filed to (i) to declare that the passage measuring 49.6" x 10' i.e., 496 sq.ft. running north to south leading to Bharathiyar 4th Street, Lakshmipuram, Thiruvanmiyur, Chennai - 600 041 as common, (ii) for a permanent injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the common lane either by parking cars or by putting up a wall or any construction on the same, and (iii) for a mandatory injunction directing the petitioners to remove the sump, bore well, hand pump and all fittings, wires, pumps, lines and conduits in the common passage.

4. The first defendant is stated to be dead and the second defendant/first petitioner filed the written statements on 26.06.2015 and 01.6.2015 respectively and is contesting the suits.

In both the suits, the trial Judge framed issues and trial commenced. The respondents filed proof affidavit. At that time, the petitioners filed two applications. One in I.A.No.5194 of 2016 in O.S.No.42 of 2014 and other in I.A.No.5196 of 2016 in O.S.No.497 of 2014. Both the applications were filed under Order XIV Rule 5 of CPC, praying to re-cast the additional issues as mentioned in the schedule to the petitions.

5. According to the petitioners, the following additional issues mentioned in the schedule to the petition, are necessary to decide the dispute in the suit :

1. Whether the above suit for mandatory injunction by the plaintiffs maintainable without challenging the proceedings of the Metropolitan Development Authority dated 20.2.2005, 17.06.2006 and 26.12.2005?
2. Whether the above suit for mandatory injunction by the plaintiffs is maintainable without challenging the sale deed dated 23.10.2007 bearing Document No.7521/2007?
3. Is it not the above suit liable to be dismissed as the above suit without restoring the suit bearing O.S.No. 1546 of 2015 is invalid?
4. Is it not the above suit liable to be dismissed as the gate wall

and sump does not form part of suit A & B schedule properties?

5.To what other reliefs.

It is contended by the petitioners that while framing the issues, the learned Judge by inadvertence has failed to frame those aforementioned additional issues.

6. The respondents 1 and 2 filed a common counter affidavit and opposed the applications. With regard to point no.1 whether the suit for mandatory injunction is maintainable without challenging the proceedings of CMDA? The respondents have stated that CMDA is not a party to the suit and therefore, the departmental proceedings need not be challenged and it need not be decided in the suit. As far as sale deed (point no.2) is concerned, without the knowledge of respondents 1 and 2, the common pathway was sold. If the petitioners are claiming right based on the sale deed, then they must pay the necessary court fee to claim their relief. With regard to point no.3, the earlier suit in O.S.No.1546 of 2012 has no bearing with regard to the issues in the present suit. Similarly, the point No.4 is also not necessary.

7. The learned Judge considering the averments in the affidavit and counter affidavit dismissed the application holding that additional issues claimed by the petitioners are not necessary to decide the dispute in the suit.

8. Against the orders of dismissal dated 21.11.2016 made in both the applications in I.A.No.5196 of 2016 and I.A.No.5194 of 2016, the petitioners have filed the present two revision petitions.

9. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and perused the materials available on records.

10. From the records it is seen that the trial Court has framed issues based on the pleadings, and trial commenced. The respondents 1 and 2 have filed proof affidavit. At that stage, the petitioners have filed the two applications in I.A.No.5196 of 2016 and I.A.No.5194 of 2016, for framing of additional issues. The learned Judge considering the pleadings, dismissed those two

applications on the ground that in both the suits, the additional issues are not necessary to decide the dispute in the suit. The learned XIII Assistant Judge, City Civil Court, Chennai has given cogent and valid reason for rejecting the contentions of the petitioners for framing additional issues. There is no illegality or irregularity in the orders dated 21.11.2016 passed by the learned XIII Assistant Judge, City Civil Court, Chennai in I.A.No.5196 of 2016 and I.A.No.5194 of 2016 warranting interference by this Court.

11. In the result, these Civil Revision Petitions are dismissed. Since the suit is of the year 2014, the learned XIII Assistant Judge, City Civil Court, Chennai, is directed to dispose of the suits, in accordance with law, as expeditiously as possible, in any event, not later than six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

09.06.2017

Speaking Order / Non-speaking Order

Index : Yes/No
Internet: Yes/No

To

The XIII Assistant City Civil Court,
Chennai.

V.M.VELUMANI,J

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