

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.P.D.No.138 of 2017
and C.M.P.No.624 of 2017

Muthunarayanan

.. Petitioner

-Vs.-

1. Gurumurthy
2. Samyuktha
3. Manji Bharathi
4. Jayabal

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 06.09.2016 made in I.A.No.2175 of 2015 in O.S.No.1250 of 2008 on the file of the Principal District Munsif Court, Puducherry.

For petitioner ... Mr.R.Jayaprakash

For respondents ... Mr.R.Thiagarajan

O R D E R

The first defendant is the revision petitioner challenging the dismissal of the application under Order VII Rule 11 of C.P.C.

2. The suit is filed for bare injunction. Earlier, the defendants had filed I.A.No.728 of 2010 under Order VII Rule 11 C.P.C. The said application was allowed after contest. However, the plaintiffs were directed to seek the prayer for declaration of title and for payment of Court fees. The said application was challenged by way of a revision petition in C.R.P(P.D) No.3033 of 2010 before this Court, which was allowed on 29.09.2011 by setting aside the order allowing the application in I.A.No.728 of 2010 under Order VII Rule 7 C.P.C. There was another application filed by the defendants in I.A.No.1200 of 2014 for rejection of plaint, which was dismissed for default and there were no steps were taken to restore the same and this is the third application filed by the revision petitioner for the same relief.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

4. According to the revision petitioner, the dismissal of

I.A.No.1200 of 2014 for default does not bar a fresh application, as the same was not dismissed on merits. But, the contention of the revision petitioner is that as per the judgment of the Hon'ble Supreme Court, a plaintiff cannot take a plea of adverse possession in the plaint, as it can be used only as a defence by the defendant. Even presuming the same is correct, it cannot be the reason for rejecting the plaint and the plaint can only be rejected on the grounds enumerated under Order VII Rule 11 C.P.C.

5. The learned counsel for the defendant has not specifically stated that there is no cause of action for filing the suit or the suit is barred by limitation or any other ground.

6. Even presuming that the application in I.A.No.1200 of 2014 would not be a bar, under Section 11 of C.P.C, there is no proper explanation as to how the third application is maintainable, when the earlier application was dismissed by this Court. Whether the question of adverse possession is available to the plaintiff or not, can be examined

only at the time of trial and the same cannot be determined in an application under Order VII Rule 11.C.P.C. Therefore, the learned trial

PUSHPA SATHYANARAYANA.J

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Judge has rightly dismissed the application, which does not warrant any interference.

7. Hence, the Civil Revision Petition is dismissed as devoid of any merits. Considering the pendency of the suit from the year 2008, the learned Principal District Munisf, Puducherry is directed to dispose of the same as expeditiously as possible, however, not beyond 31.08.2017. No costs. Consequently connected miscellaneous petition is closed.

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Index: Yes/No

Internet:Yes/No

To

The Principal District Munsif Court,
Puducherry.

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