

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1500 of 2017

Kanniammal

.. Petitioner

Vs.

1.Chellammal

2.The Commissioner
Corporation of Chennai
Ribbon Buildings
Chennai – 600 003.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 27.03.2017 made in I.A.No.1897 of 2017 in O.S.No.3174 of 2010 on the file of the learned XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Thirugnanam for
Mr.S.Umapathy

For R1/Caveator : Ms.Subashree Valliappan

ORDER

This Civil Revision Petition has been filed against the fair and

decreetal order dated 27.03.2017 made in I.A.No.1897 of 2017 in O.S.No.3174 of 2010 on the file of the learned XV Assistant Judge, City Civil Court, Chennai.

2.The petitioner is the first defendant, first respondent is the plaintiff and the second respondent is the second defendant in O.S.No.3174 of 2010. The first respondent/plaintiff filed the suit for mandatory injunction directing the petitioner to remove the A.C.roof building put up by the petitioner in the land belonging to the second respondent and also for permanent injunction restraining the petitioner from encumbering, alienating or altering the superstructure with regard to the suit property.

3.The petitioner filed a written statement in the month of July 2010 and is contesting the suit. After completion of evidence on behalf of the first respondent and petitioner, petitioner closed evidence on his side. The petitioner at this stage filed I.A.No.1897 of 2017 for reopening the evidence of petitioner's side in the suit and also filed I.A.No.1901 of 2017 for issuance of subpoena to the officials of the Corporation with regard to the property register mentioned by them.

4. According to the petitioner, the property does not belong to the second respondent, it belongs to the Revenue Department. The petitioner is in possession of the documents to show that the property belongs only to the Revenue Authority. The first respondent has filed a counter and opposed the said application by submitting that the petitioner has not stated the above aspect in the earlier application filed by him that the second respondent is not the owner of the property. The petitioner has filed the present application, only when the suit is posted for arguments and hence, he prayed for dismissal of the application.

5. The learned Judge considering the averments mentioned in the affidavit, counter affidavit and materials available on record, dismissed both the applications by common order dated 27.03.2017 holding that whether the property belongs to the Revenue Department or belongs to the second respondent is not a issue in the suit. If the petitioner has put up construction obstructing the passage to the first respondent's house from the road, the same has to be removed. The second respondent is taking steps to remove the construction put up by the petitioner for

20 years. Whenever the second respondent issued notice, the petitioner is initiating legal proceedings preventing the second respondent from removing A.C roof building put up by the petitioner in the land belonging to the second defendant. Aggrieved over the same, the present civil revision petition is filed by the first defendant/petitioner.

6. The learned counsel for the petitioner submitted that the petitioner has produced the documents to show that the property in question belongs to the Revenue Department and he put up construction after obtaining permission from the Revenue Department and also obtained No Objection Certificate to secure the electricity connection. It is further submitted that the second respondent is not the owner of the property and he has no role to play for removal of construction put up by the petitioner. The second respondent remained *exparte* and has not let in any evidence to substantiate the validity of the notice issued by them in the month of October 2006. The learned Judge by dismissing the application, in fact, decided the issue involved in the suit itself.

7. Heard the learned counsel for the petitioner and the

learned counsel for the first respondent/caveator and perused the materials available on record.

8. The first respondent has filed a suit for mandatory injunction directing the petitioner to remove the A.C.roof building put up by the petitioner in the land belonging to the second respondent and also for permanent injunction restraining the petitioner from encumbering, alienating or altering the superstructure with regard to the suit property.

9. According to the first respondent, the petitioner has put up the structure in the land belonging to the second respondent. The petitioner has denied that the property belongs to the second respondent by stating that it belongs to the Revenue Department. The petitioner has put up structure after obtaining permission from the Revenue Department.

10. The reason assigned by the learned counsel for the petitioner for reopening the case is not acceptable. The petitioner has not taken such stand in the earlier proceedings that the property does not belong to the Corporation and it belongs only to the Revenue Department. The petitioner has also not denied the

fact that the second respondent for the past 20 years is taking steps to remove the structure put up by the petitioner in the property in question. Further, this Court vide order dated 29.04.2003 in W.P.No.13722 of 2003 directed the second respondent to dispose of the representation given by the first respondent. The learned Judge on considering all the facts rightly held that the property belongs to the second respondent and if structure obstructs the passage to the first respondent's house from the road, the same has to be removed. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 27.03.2017.

11. From the records, it is seen that the second respondent/Corporation is not contesting the suit. Having issued notice to the petitioner, it is the duty of the second respondent to effectively putforth their case. The second respondent is not taking any steps to conduct the suit filed against them. In such circumstances, the Registry is directed to send a copy of this order to the Commissioner, Corporation of Chennai and on receipt of the same, the Commissioner is directed to instruct the concerned official to co-ordinate with the counsel appearing for the

Corporation and effectively, putforth their case in conducting the suit.

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

24.04.2017

Index : Yes

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To

XV Assistant Judge, City Civil Court, Chennai.

V.M.VELUMANI, J.

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