

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.1504 of 2017
& C.M.P.No.7010 of 2017

Sengeni Ammal (Deceased)

1.C.Mohan

2.C.Devaraj

3.C.Sampath

.. Petitioners

Vs.

1.C.Yeshwant Narayanan

2.C.E.Sathyanarayana Reddy

3.N.Devichithra

4.M/s.Mithra Home Makers P.Ltd.,

Represented by its Director

Mrs.Sujatha Moorthy

Having office at No.602

Suruthi block

Chithra Avenue, No.9

Choolaimedu high road

Chennai-600 094.

5.M/s.Eagle Realty Foundations P.Ltd.,

Rep.by its Director

Having office at No.35

M.S.Koil street

Royapuram, Chennai-600 013.

6.The Sub Registrar

Thiruporur, Kancheepuram District.

7.The District Collector
Kancheepuram District
At Kancheepuram.

8.Mr.Rajan Dev

9.C.Dhavanthini

10.M/s.Casa Grande Civil Engineering
Private Ltd., Represented by its Director
Having office at: 5th Floor, NPL Devi
New No.111, Old No.39
L.B.Road, Thiruvannamiyur
Chennai-600 041.

.. Respondents

(Respondent 3 to 7 remained
ex parte before the District Munsif
Chengalpattu, hence they are
given up)

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decreetal order dated
04.11.2016 made in I.A.No.587 of 2016 in O.S.No.479 of 2009 on
the file of the learned District Munsif, Chengalpattu.

For Petitioner : Ms.M.Meenatchi

ORDER

This Civil Revision Petition has been filed against the fair and
decreetal order dated 04.11.2016 made in I.A.No.587 of 2016 in
O.S.No.479 of 2009 on the file of the learned District Munsif,
Chengalpattu.

2. The petitioners are the plaintiffs and respondents 1 to 6 are the defendants in O.S.No.479 of 2009. The suit is one for permanent injunction restraining the defendants 1 to 5 from interfering with the petitioners' peaceful possession and enjoyment of the property described in the schedule. The respondents 1 to 4 filed written statement on 14.07.2010.

3. The petitioners filed I.A.No.587 of 2016 to implead the respondents 8 to 10 as defendants 8 to 10 in the suit. According to the petitioners, 8th respondent has appointed 10th respondent as his power agent to deal with his property. The 10th respondent during 2015 trespassed into the suit property and is trying to put up illegal construction. The respondents 1, 2 and 9 have no right to sell the property and sale deed executed by them is non est in the eye of law. Therefore, the respondents 8 to 10 are necessary and proper parties to the suit.

4. The respondents 1, 2 and 9 filed counter affidavit denying all the averments in the affidavit and submitted that the 8th respondent has filed I.A.No.317 of 2016 for impleading himself as 8th defendant in the suit. At that time, the petitioners filed counter

affidavit and opposed the said application on the ground that the 8th respondent is not necessary and proper party in the suit. In view of such stand taken by the petitioners in I.A.No.317 of 2016 filed by the 8th respondent, they are estopped from filing the present application for impleading the respondents 8 to 10 as defendants 8 to 10. The respondents 1, 2 and 9 also submitted that in I.A.No.1329 of 2009 filed for interim injunction, after contest, it was held that the petitioners are not in possession of the suit property. The petitioners did not initiate further proceedings against the dismissal of I.A.No.1329 of 2009. In view of the finding of the learned Judge that the petitioners are not in possession of the suit property, the question of 10th respondent trespassing into the suit property does not arise. Therefore, respondents 1, 2 and 9 prayed for dismissal of the application.

5. The 8th respondent filed counter and stated that he filed I.A.No.317 of 2016 for impleading himself as a party/defendant and the said application was dismissed for default. He has filed another application to restore the same and the same is pending. It is further stated that he can be impleaded as 8th defendant and the application in I.A.No.317 of 2016 filed by him has also to be

allowed. Once 8th respondent/principal is not impleaded as a party defendant, his power agent/10th respondent is also not necessary and proper party to the suit.

6. The 10th respondent filed counter affidavit stating that the petition filed by the petitioners is not permissible either by law or by facts. The petitioners have not come to the Court with clean hands. It is further stated that the 10th respondent is not a necessary party to the suit.

7. The learned Judge considering the averments mentioned in the affidavit, counter affidavit, materials available on record and the order made in I.A.No.1329 of 2009 filed by the petitioners for injunction, dismissed the application holding that the petitioners are not in possession of the suit property and in these circumstances, the contention of the petitioners that the 10th respondent is trespassing into the suit property does not arise and putting up illegal construction is not sustainable.

8. Against the order of dismissal dated 04.11.2016 made in I.A.No.587 of 2016, the present civil revision petition is filed by the petitioners/plaintiffs.

9. The learned counsel appearing for the petitioners submitted that the suit property was assigned to the father of the petitioners, who is a freedom fighter and from that day onwards, the petitioners are in possession of the suit property and the respondents are trying to interfere with their peaceful possession. Therefore, the petitioners have filed the suit. Pending suit, the respondents 1, 2 and 9 sold the portion of the property to 8th respondent, who appointed 10th respondent as his power agent. 8th respondent has filed the application to implead himself as 8th defendant and the same was also dismissed for default. But the learned Judge without considering the above facts, committed an error by dismissing the application. Hence, he prayed for allowing this revision.

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

11. The petitioners have filed O.S.No.479 of 2009 for permanent injunction. In view of this relief, title of the property is not an issue. The petitioners have to prove their possession of the suit property and interference by the respondents in order to succeed the suit property. Subsequent sale deed and power of

attorney deed are not relevant to decide that the petitioners are in possession of the suit property.

12. It is pertinent to note that the petitioners have opposed the application in I.A.No.317 of 2016 filed by the 8th respondent to implead himself as 8th defendant. In view of such stand taken by the petitioners and the findings of the learned Judge in I.A.No.1329 of 2009 filed by them for injunction that the petitioners are not in possession of the suit property, the learned Judge dismissed the application by giving cogent and valid reasons. Therefore, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 04.11.2016. It is open to the petitioners to withdraw their objections filed in I.A.No.317 of 2016, if the same is restored to file.

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

24.04.2017

Index : Yes/No

dm/kj

V.M.VELUMANI, J.

dm/kj

To

- 1.The District Munsif,
Chengalpattu.
- 2.The Sub Registrar,
Thiruporur, Kancheepuram District.
- 3.The District Collector,
Kancheepuram District,
At Kancheepuram.

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