

In the High Court of Judicature at Madras

Dated : 24.4.2017

Coram :

The Honourable Ms.Justice V.M.VELUMANI

Civil Revision Petition (PD)No.1532 of 2017 & CMP.No.7124 of 2017

M.Ramaswamy

Vs

...Petitioner

1.Sarojini

2.V.Prabhu

3.V.Nithyanandham

...Respondents

PETITION under Article 227 of The Constitution of India to strike off the
plaint in O.S.No.365 of 2017 on the file of the Principal Subordinate Court,
Coimbatore.

For Petitioner : Mr.N.Ponraj

ORDER

This civil revision petition has been filed to strike off the plaint in O.S.
No.365 of 2017 on the file of the Principal Subordinate Court, Coimbatore.

2. The petitioner is the defendant and the respondents are the
plaintiffs in the said suit. The plaintiffs/respondents filed the said suit for a
permanent injunction restraining the defendant from in any manner
obliterating or annexing the East-West Appanaickenpatti Itteri (cart track)
running south of the defendant's property and north of the plaintiffs' land

comprised in S.F.Nos.326 and 327 of Selakarichal Village thereby preventing the plaintiffs' ingress and egress to their property through the East-West Appanaickenpatti Itteri (cart track) shown as ABCD in the plaint plan.

3. According to the petitioner/defendant, earlier he filed O.S.No.1818 of 2016 on the file of the First Additional District Munsif Court, Coimbatore, against respondents 2 and 3/plaintiffs 2 and 3 in O.S.No.365 of 2017 and others, for a permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the property measuring 7.8 acres in Appanaickenpatti Village, Sulur Taluk, Sulur Sub-Registration District, Coimbatore Registration District in S.F.No.355/1. The defendants therein entered appearance through an advocate and are contesting the suit filed by the petitioner/defendant.

4. While so, the respondents/plaintiffs filed the present suit in O.S.No. 365 of 2017 seeking permanent injunction restraining the petitioner/defendant from interfering with the use of the cart track in S.F.Nos.326 and 327 of Selakarichal Village and not to prevent ingress and egress to their property. According to the petitioner/defendant, the present suit is an abuse of process of court and no cause of action arises for the present suit. Further according to the petitioner/defendant, there is no chance for the respondents/plaintiffs succeeding in the present suit. It is further submitted by the learned counsel for the petitioner/defendant that the respondents/plaintiffs ought to have filed an application for interim injunction in the suit filed by the petitioner/defendant in O.S.No.1818 of 2016, as the property

involved in both the suits are one and the same. According to the petitioner/defendant, the present suit filed by the respondents/plaintiffs is vexatious one and is an abuse of process of court. In such circumstances, the petitioner/defendant prayed to strike off the plaint filed in O.S.No.365 of 2017.

5. From the material records, it is seen that the petitioner/defendant has sought for permanent injunction in the suit filed by him in O.S.No.1818 of 2016 against respondents 2 and 3 herein and six others in respect of the property measuring 7.8 acres in S.F.No.355/1, Appnaickenpatti Village whereas the respondents herein filed O.S.No.365 of 2017 for an injunction restraining the petitioner and his men from interfering with their use of the cart track in S.F.Nos.326 and 327 of Selakarichal Village and not to prevent their ingress and egress to their property.

6. A reading of the plaint shows that in both the suits, the survey numbers are different and also the property mentioned is not one and the same. In the present suit, the respondents are seeking injunction with regard to a cart track in S.F.Nos.326 and 327. Further, the first respondent herein is not a party to the suit in O.S.No.1818 of 2016 filed by the petitioner herein.

7. Considering the facts, it cannot be said that the present suit is an abuse of process of court. The issue as to whether the respondents herein are entitled to the relief sought for or whether the suit is frivolous or vexatious can be decided only by appreciating the evidence let in by the parties. The power under Article 227 of The Constitution of India is an

extraordinary power and it is a discretionary power and it can be exercised only sparingly and in extraordinary cases, when, on the face of the proceedings, there is an abuse of process of court and when the plaint does not disclose any cause of action and is barred by any law to invoke Article 227 of The Constitution of India. This is not a case falling under that category.

8. In the result, the above civil revision petition is dismissed. Consequently, the connected CMP is also dismissed.

24.4.2017

Index : Yes
Internet : Yes

To
1.The Principal Subordinate Court, Coimbatore.
2.The First Additional District Munsif Court, Coimbatore.

RS

V.M.VELUMANI,J

RS

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