

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1547 of 2017
& C.M.P.No.7184 of 2017

1.Selvakumar
2.Rajasekar
3.Jagadeesan

.. Petitioners

Vs.

Thiyagarajan @ Muthukumarasamy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.03.2017 made in I.A.No.65 of 2017 in O.S.No.42 of 2016 on the file of the learned Subordinate Judge, Karaikal.

For Petitioner : Mr.S.Sounthar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 09.03.2017 made in I.A.No.65 of 2017 in O.S.No.42 of 2016 on the file of the learned Subordinate Judge, Karaikal.

2. The petitioners are the defendants and the respondent is the plaintiff in O.S.No.42 of 2016. The respondent filed suit for declaration that the respondent is the absolute owner of the suit property and consequentially directing the petitioner to handover the vacant possession of the suit property to the respondent after demolishing and removing their illegal construction made in the suit property. The petitioners have filed written statement on 22.12.2016 and are contesting the suit.

3. Earlier, the third petitioner has filed O.S.No.137 of 2012 against the respondent for injunction restraining him from interfering with his peaceful possession and enjoyment of the suit property.

4. The petitioners filed I.A.No.65 of 2017 to stay the trial of the suit in O.S.No.42 of 2016 under Section 10 of C.P.C. till the disposal of the suit in O.S.No.137 of 2012. According to the petitioners, the parties, properties and issues are one and the same in both the suits. The present suit is the subsequent suit of O.S.No.137 of 2012 and to avoid conflicting judgments, the trial of the suit in O.S.No.42 of 2016 to be stayed till the disposal of

O.S.No.137 of 2012. The respondent has filed counter denying the averments made in the application stating that the relief sought for in the present suit cannot be granted in the earlier suit.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and relief sought for by the parties in both the suits, dismissed the application holding that the parties and reliefs are not one and same. In the present suit, the relief of declaration of title and recovery of possession is sought for by the respondent, whereas the third petitioner has filed O.S.No.137 of 2012 for injunction restraining the respondent herein from interfering with the third petitioner's peaceful possession and enjoyment of the suit property. The learned Judge further held that the relief sought for by the respondent in O.S.No.42 of 2016 cannot be considered and ordered in the earlier suit filed by the third petitioner alone for injunction.

6. Against the order of dismissal dated 09.03.2017, the present civil revision petition is filed by the petitioners.

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

8. From the materials available on record, it is seen that the third petitioner alone filed the earlier suit against the respondent for injunction, whereas in the present suit, the respondent is claiming for declaration of title and recovery of possession against all the petitioners. In such circumstances, it cannot be held that the issues are directly and substantially one and the same in the previously instituted suit and the present suit and parties are also not same in both the suits. In the nature of reliefs sought for in the suits, there will not be any conflicting judgements if both the suits are proceeded with and judgements are delivered.

9. The learned Judge considering all the materials available on record dismissed the application by giving cogent and valid reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 09.03.2017.

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

28.04.2017

Index : Yes

dm/kj

V.M.VELUMANI, J.

dm/kj

To

The Sub Judge, Karaikal.

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