

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1631 of 2017

Devaki

.. Petitioner

Vs

1.P.Ganesan

2.The Chairman
Tamil Nadu Slum Clearance Board,
T.P.Chatram, Chennai – 5.

3.The Estate Officer
Tamil Nadu Slum Clearance Board,
T.P.Chatram, Chennai – 5.

..Respondents

Prayer:- Civil Revision Petition filed under Section 115 of the Constitution of India, to set aside the order made in I.A.No.14417 of 2016 in O.S.No.3669 of 2016 dated 24.03.2017 pending on the file of XV Assistant City Civil Court, Chennai.

For Petitioner : Mr.C.B.Muralikrishnan

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order dated 24.03.2017 in I.A.No.14417 of 2016 in O.S.No.3669 of 2016 pending on the file of XV Assistant City Civil Court, Chennai.

2. The petitioner is the first defendant, the first respondent is the plaintiff and the respondents 2 and 3 are the defendants 2 and 3 in O.S.No.3669 of 2016 on the file of the XV Assistant, City Civil Court, Chennai. The first respondent/plaintiff filed the said suit for (i) mandatory injunction directing the first defendant to remove the encroached portion at "B" schedule property and to use the same as common pathway, (ii) appointment of advocate commissioner and (iii) for a permanent injunction. According to the petitioner/1st defendant, the vacant land was allotted to the 1st respondent/plaintiff by the respondents 2 and 3. The original allotment of the said land stood in the name of some other persons and at a later point of time, those allotments were transferred to some other persons including the first respondent herein. The first respondent/plaintiff is using the common pathway without any disturbance for more than a decade, and it is the only passage available for him to reach his property.

3. The first respondent/plaintiff filed the suit for mandatory injunction on the ground that he was allotted a vacant land by the respondents 2 and 3 on 23.03.1995, vide proceedings dated Na.Ka.No.7006/95/E.3. In the said plot, first respondent/plaintiff had constructed a house and residing therein by obtaining electricity connection and he is in uninterrupted

possession of the suit scheduled property with easementary rights since 1995. While so, as the petitioner/1st defendant interfered with the right of usage of the passage, the first respondent/plaintiff filed the suit for the above relief. The petitioner/1st defendant filed written statement on 13.04.2017 and she is contesting the suit. Thereafter, the petitioner/1st defendant filed I.A.No.14417 of 2016 to reject the plaint, as no cause of action arose for the first respondent to file the suit. The first respondent/plaintiff has not filed any counter in the application in I.A.No.14417 of 2016 filed by the petitioner/1st defendant to reject the plaint.

4. The learned Judge, considering the averments in the affidavit and materials placed on record and relying on the judgments of this Court and Hon'ble Apex Court, dismissed the application holding that the application filed under Order 7 Rule 11 of CPC will be considered only based on the averments mentioned in the plaint, and not on the averments in the written statement and the application filed by the petitioner/1st defendant. Against the said order of dismissal, the petitioner/1st defendant has filed this Civil Revision Petition.

5. The learned counsel for the petitioner submitted that

the first respondent/plaintiff has filed the suit for mandatory injunction. The grievance of the petitioner/1st defendant is that the first respondent/plaintiff filed the suit without any cause of action and therefore, the suit has to be rejected.

6. Heard the learned counsel appearing for the petitioner and perused the material placed before this Court.

7. From the records, it is seen that in paragraph No.9 of the plaint, the first respondent/plaintiff has stated that on 23.03.1995, the allotment order was issued by the respondents 2 and 3 in favour of the first respondent/plaintiff and five other residents, and from that date onwards, the first respondent/plaintiff and other residents are residing in the land allotted to them and the suit schedule property is the common pathway. It appears that when the petitioner/first defendant interfered and constructed a pillar in the suit schedule property, the first respondent/plaintiff lodged a police complaint before the Inspector of Police, T.P.Chatram Police Station, and the parties in the suit were advised to approach the Civil Court for their relief. In the said circumstances, the petitioner has filed the suit in O.S.No. 3669 of 2016. In an application filed under Order 7 Rule 11 of CPC, the averments in the plaint are the criteria to decide the issue. Under

the said circumstances, the learned XV Assistant Judge, City Civil Court, Chennai, has considered all these facts and dismissed the application in I.A.No.14417 of 2016 by giving cogent and valid reasons. There is no infirmity or illegality in the order passed by the learned Judge warranting interference by this Court.

In the result, this Civil Revision Petition is dismissed. No costs.

28.04.2017

ds

Speaking order/Non-speaking order
Index : Yes/No

To:

The XV Assistant City Civil Court
Chennai.

V.M.VELUMANI,J

ds

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