

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1732 of 2017
& C.M.P.No.8197 of 2017

K.Ravichandran

.. Petitioner

Vs.

1. T.K.Mohan

2. Parimala

3. Sakthivel

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 20.04.2017 made in I.A.No.4 of 2016 in C.M.A.No.3 of 2016 on the file of the Sub Court, Mettur.

For Petitioner

: Mr.A.Sundaravadhanan

For Respondents/Caveators: Mr.B.Nambiselvan

ORDER

This Civil Revision Petition has been filed against the fair and final order dated 20.04.2017 made in I.A.No.4 of 2016 in C.M.A.No.3 of 2016 on the file of the Sub Court, Mettur.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit in O.S.No.133 of 2015 on

the file of the District Munsif Court, Mettur for permanent injunction restraining the respondents from in any way interfering with peaceful possession and enjoyment of the suit property. Pending suit, the petitioner filed an application in I.A.383 of 2015 under Order II Rule 2 and Section 152 of CPC to prosecute the case with new cause of action. Thereafter, the petitioner filed an application in I.A.No.470 of 2015 under Order 39 Rule 1 & 2 and Section 151 of CPC for ad-interim temporary injunction. In the said application, interim relief was granted to the petitioner. The respondent opposed the said relief. Before the learned judge no oral evidence was let in by the petitioners and respondents. The petitioner marked 55 documents as Ex.A1 to Ex.A55 and the respondents marked 8 documents as Ex.B1 to Ex.B8.

3. The learned Judge considering the materials available on record and the documents filed by the parties, allowed the application in I.A.No.470 of 2015 in O.S.No.133 of 2015 vide order dated 10.2.2016, and granted interim injunction holding that the petitioner has made out a *prima facie* case in the suit and balance of convenience is in his favour. Against which, the respondents have filed an appeal in CMA No.3 of 2016 on the file of

Sub Court, Mettur

to set aside the said order dated 10.2.2016 passed in I.A.No.470 of 2015. Thereafter, the respondents also filed an application in I.A.No.4 of 2016, praying to grant stay of the order of the trial Court in I.A.No.470 of 2015 in O.S.No.133 of 2015. The said application in I.A.No.4 of 2016 was ordered. The learned Appellate Judge in his order has held that since number of suits are pending between the petitioner and respondents with regard to the suit property, and that the contesting parties belong to the same family and the parties were also in possession and enjoyment of their respective partitioned suit property, had granted stay till the disposal of the appeal in CMA.No.3 of 2016.

4. Aggrieved by the said order dated 20.4.2017 in I.A.No.4 of 2016 in CMA.No.3 of 2016, the petitioner has filed the present Civil Revision Petition.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents/caveators.

6. From the order of the Appellate Court, it is seen that the learned Appellate Judge had stayed the order of injunction granted in I.A.No.470 of 2015 by the trial Court on the ground that the petitioner had already filed suits with regard to the same property and that the parties are belonging to the same family and the parties were also in possession and enjoyment of their respective partitioned suit property.

7. It is contended by the petitioner that though the Appellate Court took note of the fact that the second respondent herein had admitted in his letter (marked as Ext.A14) that the petitioner alone is in possession of the suit property and agreed to transfer the same within one year from the date of the letter, failed to appreciate this fact in his order. Therefore, the learned Appellate Judge failed to exercise his power properly and the reason given by the Appellate Judge in the impugned order is not valid. Hence, the petitioner is before this Court in this revision petitioner praying to set aside the order dated 20.4.2017 passed by the Appellate Judge.

8. Considering the submissions of the learned counsel on

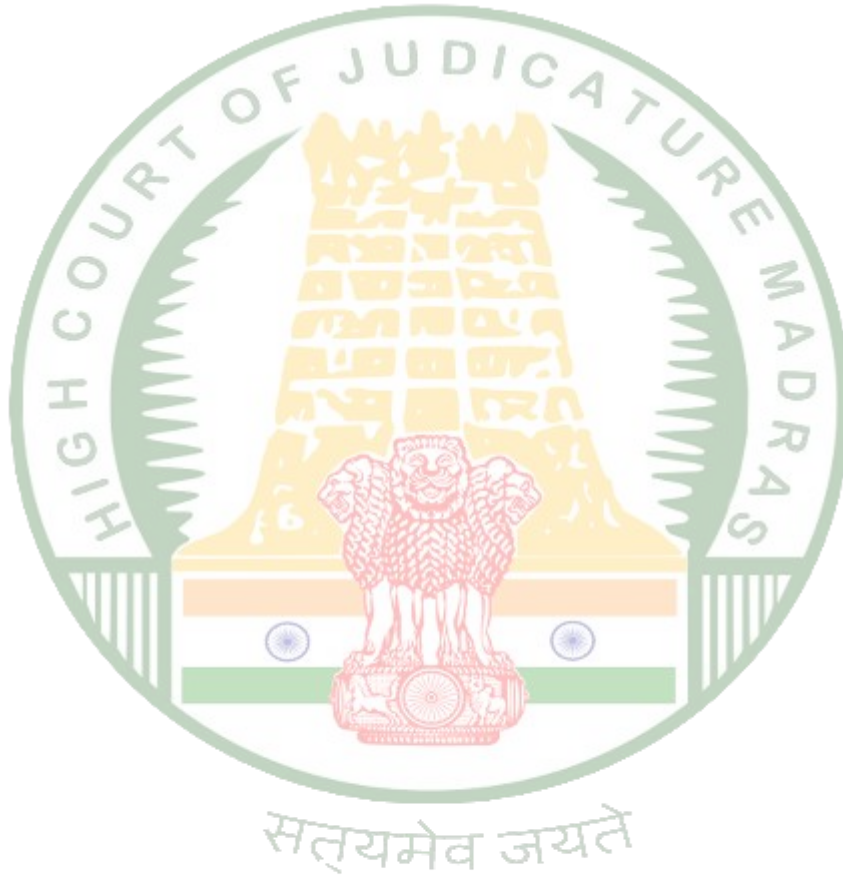
both sides and on perusing the materials available on records, this Court is of the view that the order of the Appellate Judge dated 20.4.2017 in I.A.No.4 of 2016 in CMA.No.3 of 2016 on the file of Sub Court, Mettur, is liable to be set aside and order of the trial Court granting injunction in I.A.No.470 of 2015 in O.S.No.133 of 2015 on the file of District Munsif Court is to be restored to file. Since the prayer in the suit in O.S.No.133 of 2015 and in the application filed in I.A.No.470 of 2015 is one and the same, the learned Sub Judge, Mettur is directed to dispose of the appeal itself on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order, without being influenced by the order passed in I.A.No.4 of 2016 in CMA.No.3 of 2016 on the file of Sub Court, Mettur and by the order dated 19.5.2017 passed by this Court in CRP(PD).No.1732 of 2017.

9. With the above observation and direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2017

Speaking Order/Non-speaking Order
Index : Yes
Internet : Yes / No

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V.M.VELUMANI, J.
ds

To

1.The Sub Court
Mettur.

2.The District Munsif Court
Mettur.

C.R.P.(PD)No.1732 of 2017
& C.M.P.No.8197 of 2017



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