

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.462 of 2017
and C.M.P.No.2226 of 2017

T.G.Parameswaran

.. Petitioner

Vs.

1.T.Jayakumaran

2.T.Kokila

Both the first and second respondents
are represented by their power of attorney
namely, S.Jayashankar

.. Respondents

Prayer:- Civil Revision Petition is filed under Section 115 of C.P.C.
against the petition and docket order dated 11.01.2017 passed in
C.M.P.No.80 of 2017 in A.S.No.9 of 2016 on the file of the learned
IV Additional City Civil Judge, Chennai.

For Petitioner : Mr.K.M.Venugopal

For Respondents : Mr.T.K.S.Gandhi

Ms.M.Dhivya

ORDER

Civil Revision Petition is filed against the petition and docket order dated 11.01.2017 passed in C.M.P.No.80 of 2017 in A.S.No.9 of 2016 on the file of the learned IV Additional City Civil Judge, Chennai.

2.The respondents as the plaintiffs filed a suit in O.S.No.10734 of 2009 for recovery of possession and also for injunction restraining the petitioner/defendant not to alter or modify the schedule mentioned property and damages for use and occupation. The trial Court, after hearing arguments advanced by both sides, partly decreed the suit with regard to the permanent injunction as prayed for, on 10.08.2011. Immediately, the respondents/plaintiffs filed a review application in I.A.No.2855 of 2011 and that has been allowed on 01.04.2013, wherein the trial Court has modified the decree by granting recovery of possession, recovery of damages for use and occupation and also injunction. Challenging the review, the petitioner/defendant has preferred A.S.No.9 of 2016. During pendency of the appeal, after receipt of

records and when it was posted for arguments, the petitioner/defendant has filed C.M.P.No.80 of 2017 under Sections 148 and 151 C.P.C. to extend the time for arguments in A.S.No.9 of 2016 pending disposal of the suit in O.S.No.13555 of 2010. The first appellate Court after hearing both sides dismissed the petition, against which, the present revision is preferred by the petitioner/defendant.

3.Learned counsel for the petitioner would submit that the petitioner has filed O.S.No.13555 of 2010 for declaration that the decree and judgment dated 03.12.1984 made in O.S.No.6615 of 1980 as null and void, also for declaration of sale deed dated 25.10.2005 executed in favour of the respondents/plaintiffs as null and void and for injunction. After plaintiff's side evidence was over and when the suit was posted for defendants' side evidence, the suit was periodically adjourned by the defendants. So no prejudice would be caused to both the parties in adjourning A.S.No.9 of 2016 till the disposal of the suit in O.S.No.13555 of 2010. But the first appellate Court did not consider the above aspect. Hence, he prays for allowing the revision.

4.Learned counsel for the respondents would submit that the petitioner herein has also preferred A.S.Nos.372 and 373 of 2009 in respect of the same property and the parties are also one and the same. The said appeals are pending before the same Court, where A.S.No.9 of 2016 is pending. Therefore, all the three appeals can be heard together simultaneously. But the petitioner has filed C.M.P.No.80 of 2017 to drag on the proceedings and that the first appellate Court has rightly dismissed the petition. Hence, he prays for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The petitioner has challenged the order passed in C.M.P.No.80 of 2017, which was filed for seeking extension of time to putforth his arguments in A.S.No.9 of 2016. It is pertinent to note that there are series of litigations between both the parties. The respondents as the plaintiffs are claiming title on the basis of the sale deed dated 25.10.2005 in pursuant to the decree made in O.S.No.6615 of 1980. Admittedly, the sale deed has been executed

on 25.10.2005. The suit in O.S.No.10734 of 2009 has been filed by the respondents for recovery of possession and for permanent injunction restraining the defendant not to modify or alter any schedule mentioned property.

7.Now this Court has to decide whether the docket order passed by the first appellate Court in C.M.P.No.80 of 2017 under Sections 148 and 151 C.P.C. is a just and fair order? It is admitted by both sides that A.S.Nos.372 and 373 of 2009 are pending between the same parties in respect of same property before the same Court, where A.S.No.9 of 2016 is pending. Further, O.S.No.13555 of 2010 is filed by the petitioner herein and the same is in part heard stage. If all the three appeals i.e. A.S.Nos.372, 373 of 2009 and A.S.No.9 of 2016 to be disposed of, no prejudice would be caused. Moreover, if the petitioner will get the decree in O.S.No.13555 of 2010, he can very well take redelivery of the property as per Section 144 C.P.C. Therefore, the attitude of the petitioner is to drag on the disposal of A.S.Nos.372 and 373 of 2009 and it clearly shows his malafide intention. Furthermore, the petitioner is squatting the property and without having any right, he has preferred A.S.No.9 of 2016. Since the petitioner is not ready to

argue the appeal, he has filed the petition. Hence, I do not find any reason to interfere with the docket order passed by the first appellate Court. The civil revision deserves to be dismissed and it is hereby dismissed.

8.In the result, the Civil Revision Petition stands dismissed. The learned Presiding Officer, IV Additional City Civil Court, Chennai, is directed to dispose of A.S.Nos.372 and 373 of 2009 and A.S.No.9 of 2016 simultaneously, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

10.02.2017

kj

Index:Yes/No

To

IV Additional City Civil Court, Chennai.

R.MALA,J.

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