

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.748 of 2017 & CMP.No.3687 of 2017

1.R.Kasiraj

2.K.Sivaramakrishnan

3.G.Meenakshi

...Petitioners

Vs

1.G.Navanitham

2.Sai Jayakanth Bharathi

3.L.Thirunavukarasu

...Respondents

PETITION under Article 227 of The Constitution of India against the fair and decretal orders dated 03.1.2017 passed in I.A.No.1306 of 2016 in O.S. No.507 of 2013 on the file of the Principal District Munsif Court, Poonamallee.

For Petitioners : Mr.P.K.Sabapathi

For Respondents : Mr.Amar D.Pandiya

ORDER

This civil revision petition has been filed against the fair and decretal orders dated 03.1.2017 made in I.A.No.1306 of 2016 in O.S.No.507 of 2013 on the file of the Principal District Munsif Court, Poonamallee.

2. The petitioners herein are the plaintiff and respondents 2 and 3 are the defendants in the said suit. The first respondent herein is the third party.

3. The plaintiffs filed the said suit for permanent injunction against the defendants/respondents 2 and 3 herein for a permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

4. In the said suit, the first defendant/second respondent herein filed the written statement on 03.1.2014 and the second defendant/third respondent herein filed the written statement in March 2014 and are contesting the suit. The trial commenced and chief examination of PW1 was over. The suit was posted for cross examination of P.W.1 in the month of July 2015. At that stage, the first respondent herein filed I.A.No.1306 of 2016 seeking to implead himself in the suit. According to him, the petitioners/plaintiffs filed the suit for permanent injunction and pending suit, by a deed of sale dated 20.3.2012, the first respondent/third party purchased a portion of the suit property from respondents 2 and 3/defendants and from the date of purchase, he is in possession and enjoyment of the same. Therefore, he contended that he is the necessary and proper party to decide the issue.

5. The petitioners/plaintiffs filed a counter and opposed the said application by submitting that only to drag on the proceedings at the instance of the third respondent/second defendant, the first respondent/third party came out with the interlocutory application for impleading himself as a party defendant. According to the petitioners/plaintiffs, the earlier suit in O.S.No. 265 of 2011 filed by the second respondent/first defendant against the

vendors of the petitioners/plaintiffs was dismissed on 05.10.2016. The petitioners/plaintiffs filed the present suit for permanent injunction only against respondents 2 and 3/defendants and therefore, the first respondent/third party was not a necessary and proper party.

6. The learned Trial Judge, after considering the averments contained in the affidavit and the counter affidavit, allowed the application on the ground that to decide the issue of grant of permanent injunction in the suit, the title has to be decided and only thereafter, the Court can decide the issue as to who is in possession of the property. As against this order, the above civil revision petition has been filed.

7. The contention of the learned counsel for the petitioners/plaintiffs is that the petitioners are seeking the relief of permanent injunction only against respondents 2 and 3/defendants and no relief is sought against the first respondent/third party and as such, there is no cause of action against the first respondent. According to the petitioners/plaintiffs, the first respondent filed the application for impleading, only at the instance of the third respondent/second defendant after commencement of the trial and after marking the documents, in the month of July 2015.

8. This contention has considerable force.

9. The contention of the learned counsel for the respondents that the first respondent/third party purchased the property from respondents 2 and 3/defendants on 20.3.2012 and that the first respondent/third party is in

possession of the suit property, is not applicable to the facts of the present case, since the relief sought for by the petitioners/plaintiffs in the present suit is in the nature of permanent injunction and hence, possession of the parties is a criterion and title to the suit is not in issue. In the present case, the petitioners/plaintiffs stated that they are in possession and enjoyment of the property and that respondents 2 and 3 are interfering with their possession. It is for the petitioners/plaintiffs to prove their case by letting in evidence, though the first respondent/third party had claimed that he purchased the property on 20.3.2012. He filed an application for impleadment in the year 2016 only after commencement of the trial. Therefore, the learned Trial Judge has committed an error in holding that in a suit for permanent injunction, title to the suit property has to be decided at the first instance. The learned Trial Judge has not exercised the discretion conferred on him properly.

10. In the result, the above civil revision petition is allowed and the order passed by the Trial Court is set aside. No costs. Consequently, the above CMP is closed.

24.4.2017

Index : Yes
Internet : Yes

To
The Principal District Munsif Court, Poonamallee

RS

V.M.VELUMANI,J

RS

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