

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.896 of 2017 &
CMP No.4418 of 2107

V.Palanisamy

.. Petitioner

Vs

1. Tamil Nadu Electricity Board,
Chennai.
By its Chairman,
Anna Salai, Chennai.

2. The Executive Engineer,
Tamil Nadu Electricity Board,
Co-operative Colony,
Gandhi Nagar, Namakkal.

3. The Junior Engineer (O & M),
Tamil Nadu Electricity Board,
N.Kosavampatty,
Namakkal Taluk.

4. P.Perumal

5. Kaveri

6. Lenin Kumar

.. Respondents

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the order and decretal order dated 09.08.2016 made in I.A.No.28 of 2014 in O.S.No.279 of 2011 on the file of the Principal District Munsif Court, Namakkal.

For Petitioner : Mr.T.Dhanyakumar

ORDER

The petitioner has filed this Civil Revision Petition praying to set aside the order and decretal order dated 09.08.2016 made in I.A.No.28 of 2014 in O.S.No.279 of 2011 on the file of the Principal District Munsif Court, Namakkal.

2. The petitioner, as plaintiff filed a suit in O.S.No.279 of 2011 on the file of District Munsif Court, Namakkal, for permanent injunction restraining the respondents from trespassing into the suit schedule property and erect any electric pole. The fourth respondent filed written statement. The petitioner filed an application in I.A.No.28 of 2014 under Section 10 CPC, to stay the trial of the present suit in O.S.No.279 of 2011 till the disposal of the second appeal in S.A.No.312 of 2012 pending before this Court.

3. The suit in O.S.No.354 of 2006 was filed by the petitioner/plaintiff against the respondents 4 to 6 for permanent injunction and the said suit was decreed. Challenging the order passed in O.S.No.354 of 2006, the respondents 4 to 6 herein filed A.S.No.2 of 2010 on the file of Additional Subordinate Court, Namakkal and the same was allowed. Against the judgment in A.S.No.2 of 2010, the petitioner has filed the second appeal in

S.A.No.312 of 2012 before this Court and the same is pending. Thereafter, the petitioner filed I.A.No.28 of 2014, to stay the trial in the present suit in O.S.No.279 of 2011 till the disposal of the second appeal. The respondents 4 to 6 filed counter and opposed the application in I.A.No.28 of 2014.

4. According to the respondents 4 to 6, suit filed by the plaintiff in O.S.No.354 of 2006 against them was decreed in favour of the plaintiff and patta was granted. Thereafter, vide order of the Revenue Divisional Officer, Namakkal, patta granted to the plaintiff was cancelled and the land in question was declared as Poromboke land. Thereafter, the petitioner/plaintiff filed a writ petition in W.P.No.18203 of 2009 before this Court praying to set aside the order of the Revenue Divisional Officer, Namakkal, and the same is pending. Subsequently, he filed an application in I.A.No.28 of 2014 to stay the suit in O.S.No.279 of 2011 till the finality of O.S.354 of 2006. It is submitted that the petitioner has not denied the fact that after the order passed in A.S.No.2 of 2010 on the file of Additional Subordinate Court, Namakkal, the patta granted in favour of the petitioner has been cancelled.

5. The learned Judge considering the averment in the affidavit and counter affidavit and considering the fact that the

petitioner has not stated whether the subject and relief sought for in the earlier suit in O.S.No.354 of 2006, which is to be decided in S.A.No. 312 of 2012, pending before this Court and the the suit in O.S.No.279 of 2011 is one and the same and if it is same, the petitioner could have obtained an order of stay in S.A.No.312 of 2012 itself and hence, vide order dated 09.08.2016 dismissed the application in I.A.No.28 of 2014. Against the said order of dismissal, the present Civil Revision Petition is filed.

6. It is contended by the the learned counsel for the petitioner that the scope of Section 10 CPC, was not properly appreciated by the learned Judge. The learned Judge had even failed to consider the pendency of second appeal and writ petition filed with regard to cancellation of patta. The learned Judge is not correct in holding that if the said matters in both the suits are one and the same, the petitioner would have obtained an order of stay in the second appeal itself.

7. Heard the learned counsel appearing for the petitioner.

8. From the materials placed on record, it is seen that the petitioner has not stated before the trial Court, whether the subject and relief sought for in the earlier suit in O.S.No.354 of 2006 and

the present suit in O.S.No.279 of 2011 are one and the same. Considering the aspect and fact that the petitioner has not obtained stay in the second appeal pending before this Court, and that the petitioner has not substantiated his claim for grant of stay in the present suit as per Section 10 of CPC, the learned Judge has exercised his right properly and dismissed the application by giving cogent and valid reasons. There is no irregularity or illegality in the order passed by the learned trial Judge in I.A.No.28 of 2014 in O.S.No.279 of 2011 on the file of the Principal District Munsif Court, Namakkal.

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

24.04.2017

ds

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

To:

The Principal District Munsif,
Namakkal.

V.M.VELUMANI,J

ds

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