

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2017

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP.(PD)No.977 of 2017

and

CMP.No. 4848 of 2017

K.Jayakumar

.. Petitioner

..Vs..

K.Elumalai @ Rajendran

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal Order in C.M.A.No.2 of 2014 dated 05.01.2017 on the file of the learned Subordinate Judge, Panruti, reversing the fair and decretal Order in I.A.No.954 of 2012 in O.S.No.274 of 2012 dated 21.12.2013 on the file of the learned District Munsif's Court, Panruti.

For Petitioner : Mr.N.Suresh

For Respondent : No appearance

ORDER

Civil Revision Petition has been filed against the Fair and Decretal Order in C.M.A.No.2 of 2014 dated 05.01.2017 on the file of the learned Subordinate Judge, Panruti, reversing the fair and decretal Order in I.A.No.954 of 2012 in O.S.No.274 of 2012 dated 21.12.2013 on the file of the learned District Munsif's Court, Panruti.

2. The petitioner is the plaintiff in O.S.No.274 of 2012 and

respondent in C.M.A.No.2 of 2014. The respondent is the defendant in Original Suit and appellant in the Civil Miscellaneous Appeal. The petitioner and respondent are brothers. The petitioner filed a suit for permanent injunction restraining the respondent, his men, agent, servant or any other person claiming under him from interfering with the peaceful possession and enjoyment and peaceful running of the Rice Mill in the suit property by the petitioner by means of permanent injunction.

3. The petitioner also filed an application in I.A.No.954 of 2012 for temporary injunction for restraining the respondent, his men, agent, servant or any other person claiming under him from interfering with the peaceful possession, enjoyment and running of the rice mill in the suit property. The respondent filed the written statement and is contesting the suit. The respondent also filed a counter affidavit in I.A.No.954 of 2012.

4. The learned Trial Judge, considering the materials on record and Exs.A1 to A35 filed by the petitioner and Exs.B1 to B2 filed by the respondent, granted injunction pending the suit. The respondent filed C.M.A.No.2 of 2014 before the learned Subordinate Judge, Panruti dated 05.01.2017 challenging the interim order before the learned Sub-Judge. The petitioner marked four documents viz., Ex.P.36 to P.39 and respondent marked three documents viz., Exs.R1 to R3.

5. The learned Sub-Judge, considering all the available materials on record and documents and the order of the Trial Judge, allowed the appeal and set aside the order of the Trial Judge passed in I.A.No.954 of 2012.

6. Against the order dated 05.01.2017 in C.M.A.No.2 of 2014 on the file of the learned Subordinate Judge, Panruti, reversing the fair and decretal Order in I.A.No.954 of 2012 in O.S.No.274 of 2012 dated 21.12.2013 on the file of the learned District Munsif's Court, Panruti, the present Civil Revision Petition is filed.

7. Though the respondent entered appearance through counsel, there is no representation for him either through counsel or in person.

8. The learned counsel for the petitioner referred to the concluding portion of the impugned order passed in the C.M.A.No.2 of 2014. The said order reads as follows:

" Hence from the above discussions, I decide there is necessity to interfere the order of the trial court and it deserves to be confirmed and the trial Court fair order and decretal order in I.A.No.954/12 in O.S.No.274/12 dated 21.12.2013 passed by the District Munsif Court, Panruti, is set aside. Accordingly the issue

is decided in favour of the Appellant/Respondent.

Point No.2

14. Since the Point No.1 is decided as against the appellant, this Civil Miscellaneous appeal is dismissed and the appellant is not entitled for cost.

15. In the result, this Civil Miscellaneous Appeal is allowed. No cost and the trial Court fair order and decretal order in I.A.No.954/2012 in O.S.No.274/2012 dated 21.12.2013 on the file of District Munsif Court, Panruti is set aside."

Reading of the said order shows that the learned Appellate Judge is not clear in her mind while passing the said order. In the order, the learned Judge has stated that the order of the Trial Judge has to be interfered and at the same time, she has stated that it deserves to be confirmed and set aside the Trial Judge Order dated 21.12.2013.

9. The learned Sub-Judge decided the point No.1 in favour of the respondent herein. While giving finding to Point No.2, learned Sub-Judge has stated that since point No.1 is decided as against the respondent herein, dismissed the Civil Miscellaneous Appeal. In the very next paragraph, the First Appellate Judge has stated that the Civil Miscellaneous Appeal is allowed and fair and decretal Order in I.A.No.954

of 2012 dated 21.12.2013 is set aside.

10. Reading of the order of the learned First Appellate Judge shows that the conclusion in the said order is contradictory and the learned Sub-Judge has passed order in a casual manner. The petitioner and respondent are brothers. The Trial Court has granted injunction and learned First Appellate Court in the sum and substance of the order has allowed the CMA and set aside the order of interim injunction granted by the trial court in I.A.No.954 of 2012 dated 21.12.2013.

In the above circumstances, considering the relief sought for in the suit and in I.A.No.954 of 2012, without going into the merits of the case, the Civil Revision Petition is disposed of directing the learned Trial Judge to dispose of the suit, as expeditiously as possible, in any event, not later than, six months from the date of receipt of copy of this order. Till such time, status-quo as on the date of order of the Trial Court i.e., as on 21.12.2013, is to be maintained. No costs. Consequently, connected miscellaneous petition is closed.

gv/dh

14.06.2017

V.M.VELUMANI., J.
gv/dh

To

1. The learned Subordinate Judge,
Panruti.
2. The learned District Munsif's Court,
Panruti.

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