

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4600 & 4601 of 2015

Palani

.. Petitioner in
both CRPs.

Vs.

1.P.Rajendra Singh
2.P.Bala Singh
3.Murugan Maistry
4.Arun

.. Respondents in both
CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set-aside the order passed by the learned Principal District Judge at Thiruvallur in C.M.A.Nos.6 and 7 of 2013 dated 11.08.2015 in confirming the order passed by the learned Subordinate Judge at Poonammalee in I.A.Nos.99 and 100 of 2013 in O.S.No.33 of 2013 dated 22.07.2013.

For Petitioner : Mr.S.Rajendran
For RR1 and 2 : Mr.M.Kamalanathen
For RR3 and 4 : Dispensed

COMMON ORDER

The Civil Revision Petitions have been filed against the order passed by the learned Principal District Judge at Thiruvallur in

C.M.A.Nos.6 and 7 of 2013 dated 11.08.2015 in confirming the order passed by the learned Subordinate Judge at Poonammalee in I.A.Nos.99 and 100 of 2013 in O.S.No.33 of 2013 dated 22.07.2013.

2. The petitioner in both the civil revision petitions is the first defendant, respondents 1 and 2 are the plaintiffs and the respondents 3 and 4 are the defendants 2 and 3 in O.S.No.33 of 2013. The respondents 1 and 2 filed the suit for declaration that they are the absolute owners of B schedule property and for possession and permanent injunction restraining the petitioner and respondents 3 and 4 from putting up any construction in C and D schedule properties. The respondents 1 and 2 along with the suit filed three applications in I.A.Nos.99 to 101 of 2013. I.A.Nos.99 and 100 of 2013 are filed for temporary injunction restraining the petitioner and respondents 3 and 4 from putting up construction in C and B schedule properties. I.A.No.101 of 2013 is filed for appointment of an Advocate Commissioner to inspect the suit schedule property and to file his report. The Advocate Commissioner was appointed and he measured the suit property with the help of surveyor and filed his report on 20.06.2013. The

respondents 1 and 2 have stated that the petitioner and respondents 3 and 4 have put up plinth beam overnight on 05.02.2013 and are trying to make constructions in B, C and D schedule properties. Pending suit, if petitioner and respondents 3 and 4 put up construction and they may claim that the construction is then even before the suit. The same will lead to multiplicity of proceedings.

3. The petitioner and the respondents 3 and 4 filed counter affidavits and denied all the averments made in the affidavits filed in support of the applications. They denied the averments that they are trying to put up constructions in B, C and D schedule properties. It is further stated that the petitioner and the respondents 3 and 4 are absolute owners of C and D schedule properties. The respondents 1 and 2 have no right to stop the petitioner, respondents 3 and 4 to put up constructions in their property. The respondents 1 and 2 have admitted that the petitioner and respondents 3 and 4 are in possession and enjoyment of B schedule property. The respondents 1 and 2 have obtained patta after 12 years of purchase without measuring the property. The respondents 1 and 2 have not complied with Order

XXXIX Rule 3 of C.P.C. as they failed to serve the documents to the petitioner and respondents 3 and 4. The petitioner and respondents 3 and 4 have invested huge amounts in purchasing the land and to construct an apartment by borrowing money from outsiders. If the interlocutory applications filed for temporary injunction are not dismissed, the petitioner and the respondents 3 and 4 will be put to irreparable loss and hardship.

4. Before the learned Judge, the respondents 1 and 2 have produced patta regarding the respective properties. The learned Judge considering the averments made in the affidavit, counter affidavit, Commissioner's report and documents relied on by the parties, allowed the application holding that the identity of the B schedule property and whether the property of the petitioner and respondents 3 and 4 start from E, F or D, C as mentioned in the Commissioner's report can be gone into only during trial and if any construction is put up in B schedule property pending suit, it will lead to multiplicity of proceedings and respondents 1 and 2 have made out prima facie case.

5. Against the order dated 22.07.2013 made in I.A.Nos.99

and 100 of 2013, the petitioner and respondents 3 and 4 have filed two C.M.A.'s in C.M.A.Nos.6 and 7 of 2013 on the file of the Principal District Court, Tiruvallur.

6. The learned Principal District Judge independently considering all the materials on record and order of the learned Judge, dismissed both the C.M.A.'s holding that the petitioner and respondents 3 and 4 are intending to put up apartments in their land and encroached the neighbouring land or deviation of construction in their own land showing the neighbour's land as set back land, the sufferers will be the prospective purchasers of the apartments. The surveyor report along with the Commissioner's report clearly reveal that plinth beam put up on the northern side beyond 40 feet of the land of petitioner and respondents 3 and 4 and not in plot No.6 owned by petitioner and respondents 3 and 4.

7. Against the judgment and decree dated 11.08.2015 made in C.M.A.Nos.6 and 7 of 2013, the present civil revision petitions are preferred by the petitioner/first defendant.

8. Learned counsel for the petitioner submitted that both the

trial Court and the first Appellate Court did not apply the judicial mind and without going into the merits of the case allowed the applications and dismissed the appeals filed by him. The Courts below wrongly observed that according to the report of the Advocate Commissioner that the disputed portion is in Plot No.5, whereas there is no dispute with regard to the title of the petitioner and respondents 3 and 4 in respect of C schedule property. The orders of the Courts below are contrary to the report of the taluk surveyor, who measured the suit schedule property and filed his report. The orders of the Courts below are based only on surmises. Therefore, he prayed for allowing the civil revisions.

9. Learned counsel for the respondents 1 and 2 submitted that purchase by the respondents 1 and 2 is earlier to that of purchase by the petitioner and respondents 3 and 4. The encroachment by the petitioner and respondents 3 and 4 can be found only on the conclusion of the trial by appreciating the evidence let in by the parties. The petitioner and respondents 3 and 4 have encroached B schedule property belonging to the respondents 1 and 2 and they are trying to put up construction in the property of respondents 1 and 2. The report of the Advocate

Commissioner is not a criteria for deciding the encroachment made by the petitioner and respondents 3 and 4. The respondents 1 and 2 have made out prima facie case and balance of convenience is in their favour. Pending suit, if any construction is put up and apartments are sold to third parties, it will lead to multiplicity of proceedings. The petitioner and respondents 3 and 4 may claim that construction was put up even before filing of the suit. Therefore, he prayed for dismissal of the revisions.

10. I have heard the submissions made by the learned counsel for the petitioner as well as the learned counsel appearing for the respondents 1 and 2 and perused the materials available on record.

11. The respondents 1 and 2 contend that petitioner has encroached B schedule property and are putting up construction in C schedule property without leaving any side set back. The trial Court granted interim injunction taking into consideration the issue whether the property of the petitioner and respondents 3 and 4 start from E, F or D, C and whether respondents 3 and 4 are putting up construction in C schedule property encroaching

property of respondents 1 and 2 can be decided only on the conclusion of trial by appreciating the evidence let in by the parties. The first Appellate Court considered the fact that the petitioner and respondents 3 and 4 are intending to construct apartments and sell the same to third parties and in that case, interest of the third parties will be affected. Both the Courts below have properly appreciated the facts of the case and passed proper and valid order. There is no illegality or irregularity in the order passed by both the Courts below warranting interference by this Court.

12. In the result, the Civil Revision Petitions are dismissed. From the materials available on record, it is seen that the petitioner and respondents 3 and 4 have filed written statement on 12.04.2013 itself. Taking into consideration, the suit is of the year 2013, the learned Subordinate Judge, Poonamallee, is directed to dispose O.S.No.33 of 2013 as expeditiously as possible, in any event not later than 31.08.2017. There is no order as to costs.

07.06.2017

Index : Yes

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To

1. The Principal District Judge at Thiruvallur.
2. The Sub-Court, Poonamallee.

V.M.VELUMANI, J.

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