

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.172 of 2016

Aboorvam Balasubramaniam ... Petitioner/Defendant No.1

Vs.

K.Balasubramaniam ... Respondent/Plaintiff

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order, dated 25.09.2015 made in I.A.No.357 of 2014 in O.S.No.113 of 2016, on the file of the Subordinate Judge, Udthagamandalam.

For Petitioner : Mr.S.Elambharathi
Respondent : S.K.Rakhunathan

WEB COPY
ORDER

According to the petitioner, the respondent herein has filed a suit in O.S.No.113 of 2016 before the Sub Court, Udthagamandalam for

perpetual injunction against the petitioner from interfering with the plaintiff's right to enjoyment of the suit property and mandatory injunction directing the defendants 2 to 5 to pay the rents due in respect of the suit property to the plaintiff. Similarly, the revision petitioner also filed a suit in O.S.No.96 of 2007 for declaration of title and permanent injunction against the respondent herein before the District Munsif Court, Conoor for the very same suit property which was subsequently transferred to the Sub Court, Udhagamandalam and renumbered as O.S.No.129 of 2008. The petitioner/1st defendant has filed an application in I.A.No.357 of 2015 to decide the court fee issue as a preliminary issue before deciding other issues in the trial. The same was dismissed by the trial court, the petitioner has filed the present Civil revision petition contending that the trial court has passed erroneous order.

2 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials on record.

3 According to the learned counsel for the petitioner, the respondent herein has not paid Court fee as per the Tamilnadu Court fee and Suit Valuation Act. The Court below without considering the plea raised by the petitioner, passed an erroneous order by stating that the said issue will be decided at the time of trial. Therefore, the order passed by the trial court

warrants interference by this Court.

4 The learned counsel for the respondent/plaintiff would submit that the application filed by the revision petitioner in I.A.No.515 of 2013 for framing additional issue was allowed and additional issue as raised by the petitioner has also been framed by the trial court. Subsequently, joint trial has been conducted in the aforesaid suits and P.W.1 was examined on the side of plaintiff. At this stage, the present application has been filed by the first defendant. If the application is allowed at this stage, it will further drag on the suit proceedings. Hence, prays for dismissal of the Civil revision petition.

5 Admittedly, the petitioner has filed an application in I.A.No.515 of 2013 for framing of additional issue and pursuant to the order passed in the said application, the trial court framed additional issue viz., whether the Court fee has been properly valued or not and whether the plaintiff has paid Court fee as per the provisions of Tamilnadu Court fee and Suit Valuation Act. After framing additional issue, P.W.1 was examined. Therefore, at this stage, filing of the application would protract the entire proceedings in the suit especially when both the suits were tried jointly. Therefore, there is no prima facie case to interfere with the order passed by the court below.

D.KRISHNAKUMAR,J.

vaan

6 Accordingly, the Civil revision fails and the same is dismissed
No costs. The learned Subordinate Judge, Udhagamandalam is directed to
dispose of the suit in O.S.No.113 of 2016 as expeditiously as possible preferably
within a period of six months from the date of receipt of a copy of this order.

20.11.2017

Index: Yes/No

Internet:Yes/No

vaan

To
The Subordinate Judge, Udhagamandalam

सत्यमेव जयते
WEB COPY

C.R.P.(PD) No.172 of 2016