

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.3858 of 2016
and
C.M.P.No.19646 of 2016

1. Shantha Kurian
2. K.Abraham Rejji Kurian .. Petitioners

vs

1. M/s.R.K.Plantations
rep.by its partner Mr.Z.K.Eipe
2. Z.K.Eipe
3. K.A.Iype
4. Dr.Maya Philip .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 05.07.2016 passed by the learned III Additional District and Sessions Judge, Coimbatore in I.A.No.719 of 2014 in O.S.No.442 of 2014.

For Petitioner : Mr.K.Thyagarajan

ORDER

The defendants are the revision petitioners, who have filed this revision against the order rejecting their application filed under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure.

2. The respondents/plaintiffs filed the suit seeking the relief of declaration of title and damages for use and occupation. It is their case that the suit has not been filed against the Government challenging the order refusing to transfer patta in respect of the suit property in the names of the plaintiffs. It is also stated that they have had filed writ petition before this Court, challenging the proceedings under the Tamil Nadu Preservation of Private Forests Act, 1949 and the same is pending. The present suit is completely independent of the proceedings impugned in the writ petition.

3. The revision petitioners/defendants have filed IA No.719 of 2014 to reject the plaint. According to the defendants, the entire subject matter of the suit comes under the ambit of Tamil

Nadu Preservation of Private Forests Act, 1949 and that there is a bar under Section 9 of the said Act. The plaintiffs being fully aware of the above proceedings have filed the suit, which in the event of being decreed will nullify the order passed by the Forest Department of State of Tamil Nadu. Since, there is a specific bar under the statute to file a suit, the same has to be rejected.

4. The above application was resisted by the plaintiffs/respondents contending that it was only to drag on the proceedings, the application has been filed. According to them, the suit has not been filed against the Government. In fact, as stated earlier, already the plaintiff has filed the proceedings under Article 226 of the Constitution of India. Therefore, the suit cannot be rejected under Order 7 Rule 11 of the Code of Civil Procedure.

5. Heard the learned counsel for the petitioner.

6. Section 3 of the Tamil Nadu Preservation of Private Forests Act, 1949 clearly says that no owner of any forest shall, alienate any portion of the forest without the previous sanction of the Forest Committee and any such alienation in contravention of the same, shall be null and void.

7. It is the specific case of the plaintiffs that the orders passed or the Notification issued under the Tamil Nadu Preservation of Private Forests Act, 1949, is not challenged. But the suit is filed for declaration of plaintiffs' title to the suit property, for recovery of possession and also for damages, which is a civil dispute and the same can be filed only in a Civil Court. The suit and the decree that may be passed are independent of the proceedings or orders of the authorities under the Tamil Nadu Preservation of Private Forests Act, 1949. When the civil rights are sought to be declared by the Civil Court, there cannot be any bar under Section 9 of the Act. The focus of the defendants is only on the fact that the suit filed by the plaintiffs, is barred under Order 7 Rule 11(d) of the Code of Civil Procedure. Other than that the defendants have not stated that there is no cause of

action for filing the suit or with respect to valuation of the suit, etc. Therefore, the suit filed as such, is maintainable and the same cannot be rejected as prayed for by the defendants under Order 7 Rule 11 of the Code of Civil Procedure.

8. In the light of the above, I do not find any infirmity in the order passed by the Court below in rejecting the application filed by the revision petitioners/defendants. Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

23.01.2017

vj2

Index: yes/No

Internet: yes

To

The III Additional District and Sessions Judge, Coimbatore

PUSHPA SATHYANARAYANA,J.,

vj2

CRP PD No.3858 of 2016

23.01.2017

<http://www.judis.nic.in>