

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3219 of 2012
M.P.No.1 of 2012

1. Pakirisamy
2. N.Sooriadeepan

.. Petitioners

Vs.

Lakshmi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.06.2011 made in I.A.No.559 of 2010 in O.S.No.33 of 2008 on the file of the Principal District Munsif, Karaikal.

For Petitioners : Mr.R.Sunil Kumar

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 06.06.2011 made in I.A.No.559 of 2010 in O.S.No.33 of 2008 on the file of the Principal District Munsif, Karaikal.

2. Petitioners are the defendants and respondent is the plaintiff in O.S.No.33 of 2008 on the file of the Principal District Munsif, Karaikal. The respondent filed the said suit for a decree of prohibitory injunction, restraining the petitioners from interfering or disturbing the peaceful possession and enjoyment of the suit property by the petitioners. The petitioners filed written statement on 09.06.2008 and are contesting the suit. The petitioners filed I.A.No.559 of 2010, under Section 10 read with Section 151 C.P.C, for stay of the proceedings in the O.S.No.33 of 2008, till the disposal of the Second Appeal No.1457 of 2008.

3. According to the petitioners, the respondent is claiming prescriptive title as per the judgment in A.S.No.7 of 2005 dated 30.01.2007. One Kasiammal filed a suit in O.S.No.136 of 2001 against the respondent for recovery of possession. The said suit was decreed by the judgment dated 20.12.2004. Against the said judgment and decree dated 20.12.2004, made in O.S.No.136 of 2001, the respondent filed A.S.No.7 of 2005. The said appeal was allowed. Against that, the said Kasiammal filed S.A.No.1457 of 2008. In view of the Second Appeal, the present suit is to be stayed till the disposal of Second Appeal.

4. The respondents filed counter and submitted that the application is not maintainable under Section 10 C.P.C.

5. The learned Judge dismissed the application in view of the fact that petitioners are not parties to the earlier suit and possession of the respondent was admitted in the first Appeal and respondent is entitled to protect her possession from interference by petitioners and on the ground that the issue in the present suit and issue in the earlier suit in O.S.No.136 of 2001, in which Second Appeal 1457 of 2008 is pending before this Court are not directly and substantially an issue and subject matter is not one and the same in both the suits.

6. Against the said order of dismissal dated 06.06.2011 made in I.A.No.559 of 2010 in O.S.No.33 of 2008, the present civil revision petition is filed by the petitioners.

7. Heard the learned counsels for appearing for petitioners and perused the materials on record.

8. The petitioners have filed the application to stay the suit under Section 10 C.P.C, till the disposal of the Second Appeal 1457 of 2008, pending in this Court. The learned counsel appearing for the petitioners submitted that in the Second Appeal, the second petitioner was impleaded as legal heirs of the appellant Kasiammal, as second appellant. The said Second Appeal was allowed on 12.12.2004, confirming the judgment dated 20.12.2004, made in O.S.No.136 of 2001 and set aside the judgment dated 30.01.2007, made in A.S.No.7 of 2005. Against that the respondent filed S.L.P.Nos.8865 & 8866 of 2016 and the same is pending.

9. As per the Section 10 C.P.C, the subsequent suit can be stayed only when the parties, issues in both the suits are directly and substantially one and the same and the earlier suit was decided finally on merits. The respondent filed the present suit for injunction, restraining the petitioners from interfering with the peaceful possession and enjoyment of the property. Earlier suit was filed by the said Kasiammal against the respondent for recovery of possession. In the said suit, possession of the respondent was admitted in the first appeal in A.S.No.7 of 2005 and reversed in the second appeal. S.L.P.s are pending.

10. The present application is to stay the proceedings of the suit till the disposal of the Second Appeal No.1457/2008. The Second Appeal was allowed and SLP is pending.

11. The issues and relief sought for in both the suits are not one and the same. In view of these facts, the present suit is not liable to be stayed as per the Section 10 C.P.C. The learned Judge considering all the facts, dismissed the application. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 06.06.2011.

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

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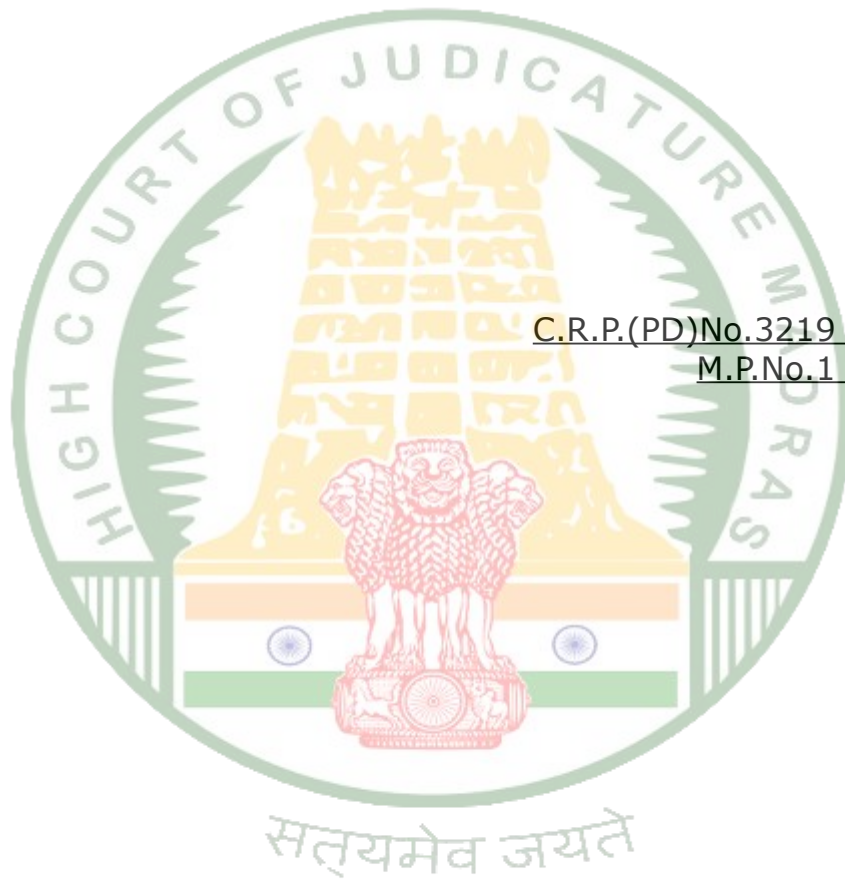
24.07.2017

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Index: Yes/No
Internet: Yes/No

To
The Principal District Munsif, Karaikal.

V.M.VELUMANI, J.

gsa



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