

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.03.2017

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THE HONOURABLE DR.JUSTICE P.DEVADASS

CRP (PD).No.4778 of 2013

C.Chokkalingam

.. Petitioner

Vs

1.Tamilnadu Electricity Board,
By its Superintending Engineer,
Erode Electricity Distirbution Circle,
E.V.N. Road,
Erode.

2.The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Modakurchi,
Erode Taluk.

3.The Assistant Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Modakurchi,
Erode Taluk.

4.P.Kamalaveni

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 21.08.2013 passed in I.A.No.288 of 2013 in O.S.No.25 of 2009 on the file of the 2nd Additional District Munsif, Erode.

For Petitioner : Mr.V.Regunathan

For 4th Respondent : Mr.S.Doraisamy

ORDER

This revision is filed against the order passed in I.A.No.288 of 2013 in O.S.No.25 of 2009 on the file of the 2nd Additional District Munsif, Erode on 21.08.2013.

2.The plaintiff is stated to have purchased the suit property from one Easwaramoorthy. Easwaramoorthy was a sharer in respect of a joint family property alongwith other sharers. Subsequently, the plaintiff has been put in possession. The fourth defendant, who is the brother of the said Easwaramoorthy claiming to have right in the suit property is alleged to have put up a temporary shed in the suit property and tried to obtain electricity connection from defendants 1 to 3.

3.In the circumstances, the plaintiff filed O.S.No.29 of 2009 in the Court of Principal District Munsif, Erode seeking injunction. Defendants 1 to 3 remained ex-parte. The fourth defendant filed written statement. Subsequently, plaintiff filed I.A.No.18 of 2011 to amend the plaint so as to seek relief of mandatory injunction to remove the objectional construction put up by the fourth defendant in the suit property. The Trial Court dismissed the said petition for want of necessary documents. The plaintiff did not prefer any miscellaneous petition as against that.

4.The plaintiff filed CRP.No.4633 of 2013 before this Court as against the said order. Subsequently, it was withdrawn. Subsequently, the plaintiff filed I.A.No.288 of 2013 to withdraw the suit with liberty to file fresh suit on the same cause of action. The defendants have not filed any counter. However, the fourth defendant made an endorsement in the petition that he has no objection in allowing the petition on imposing heavy cost and subject to the plea of *res judicata*.

5.The Trial Court dismissed the said I.A.No.288 of 2013 observing as under:

".....If the petition is allowed the petitioner once again come forwarded with the suit on same cause of action and give trouble to the respondents herein. Already the respondents suffered a lot due to this sit for the past 4 years. Moreover already the trial has been commenced and posted the suit for marking of trial. In such situation, this court is inclined to disallow this application. In the result, the ptition is dismissed."

6.The learned counsel for the revision petitioner read me the affidavit filed in support of I.A.No.288 of 2013. He has referred to Order 23 Rule 1(3) CPC. He would submit that several reasons have been shown, that the court can grant the liberty. It has not been considered by the Trial

Court. But the reason given by the Trial Court to dismiss the application is unsustainable.

7. On the other hand, the learned counsel for the fourth defendant would submit that the plaintiff after having failed in I.A.No.18 of 2011, without preferring a C.M.A or taking any further legal action in order to trouble the fourth defendant has sought for liberty from the Court which was rightly nixed by the Trial Court.

8. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

9. Filing of an appeal as against dismissal of I.A.No.18 of 2011 refusing to amend the plaint to include the prayer for mandatory injunction to remove certain objectionable constructions from the suit property is not a condition precedent to file a leave petition under Order 23 Rule (a & b) CPC. The prayer of the petitioner is that now he want to walk out of the court but again return to court with full particulars.

10. Learned counsel for the revision petitioner taken me through the affidavit. Now, the vendor Easwaramoorthy seems to have created some complication as the plaintiff's title of the property. In the present suit, only bare injunction has been sought for. The title issue will not be a

main issue in an injunction suit. However, it can be incidentally gone into to find out the manner in which the plaintiff is in possession because the injunction suit is not a suit on title.

11.The plaintiff has to fight finally and fully as against the rightful person so as to sustain the sale deed given to him by his vendor Easwaramoorthy incidentally who happened to be the brother of fourth defendant, who is the common opponent. Actually, 4th defendant did not oppose. What she had said is let the petition be allowed but upon certain terms and conditions. In the light of the above, the order of the Trial Court is flawed.

12.In view of the foregoing, it is ordered as under:

- (1) This Revision is allowed.
- (2) The impugned Order of the learned Principal District Munsif, Erode in I.A.No.288 of 2013 in O.S.No.25 of 2009 dated 21.08.2013 is set aside.
- (3) The plaintiff is permitted to withdraw the suit in O.S.No.25 of 2009 on the file of the II Additional District Munsif, Erode with a liberty to file fresh suit on the same cause of action.
- (4) There shall be no order as to costs.

23.03.2017

Index:yes/no

Internet:yes

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Dr.P.DEVADASS, J.

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To

1.The Principal District Judge ,
Namakkal.

2.The Additional District Munsif,
Erode.

C.R.P.(PD).NO.4778 OF 2013

23.03.2017

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