

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.575 of 2012
& M.P.No.1 of 2012

J.Thomas

.. Petitioner

Vs.

1. R.Sundaramoorthy

2. Maruvai Panchayat Union,
Represented by its President
Pudumaruvai Village, Kurinjpadi(via)
Cuddalore District.

3. Kurinjpadi Panchayat Union,
Represented by its Commissioner,
Panchayat Union Office,
Kurinjpadi(via)
Cuddalore District.

4. S.Radhakrishnan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgement and Decree dated 21.11.2011 passed in CMA No.9 of 2009 on the file of the III Additional Subordinate Court, Cuddalore, confirming the Fair and Final order dated 21.04.2009 passed in I.A.No.2062 of 2008 in O.S.No.523 of 2008 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner : Mr.S.Kingston Jerold
For R1 : Mr.R.Gururaj
For R2 to R4 : No appearance

ORDER

This Civil Revision Petition has been filed against the judgement and decree dated 21.11.2011 made in C.M.A. No.9 of 2009 on the file of the III Additional Subordinate Court, Cuddalore, confirming the fair and final order dated 21.04.2009 made in I.A.No.2062 of 2008 in O.S.No.523 of 2008 on the file of the Principal District Munsif Court, Cuddalore.

2. The petitioner is the plaintiff and respondents are the defendants in O.S.No.523 of 2008. The petitioner filed suit for permanent injunction restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the suit property and for mandatory injunction directing the respondents to remove the constructions put up by them in the suit property. The petitioner filed I.A.No.2062 of 2008 for interim injunction pending suit. According to the petitioner, he is in possession of the suit property for more than 25 years. The petitioner's father has filed O.S.No.169 of 1999 against the respondents and obtained decree

and contempt proceedings are pending against the respondents. In view of the same, the respondents developed inimical attitude towards the petitioner. They gave a petition to the Revenue Divisional Officer, Cuddalore, to cancel the patta granted to the petitioner. By order dated 06.03.2004, the Revenue Divisional Officer granted patta to the extent of 120 square meters and retained the remaining area as a common area for the general public. Therefore, the petitioner filed revision before the District Revenue Officer and the said revision was also dismissed.

3. The petitioner filed revision before the Special Commissioner and Commissioner for Land Administration, Chennai and the said revision is still pending. Taking advantage of the order of the Revenue Divisional Officer, the respondents entered into the suit property on 13.11.2008 in the night hours, removed the stone pillars, damaged the plantain and other crops raised by the petitioner in the suit property. Hence, the petitioner has filed suit for permanent injunction and mandatory injunction.

4. The respondents filed counter affidavit and denied various averments made by the petitioner. According to the respondents, this Court directed the authority to consider the representation of

the respondents and pass orders. In the said writ petition, father of the petitioner also was a party. As per the direction of this Court, authority considered the representation, granted patta only to 120 square meters and retained the remaining area as common area for the general public. Respondents are in possession and public are using the said remaining portion for performing last rites of dead persons in the said property. The petitioner is not in possession of the said property. Therefore, he is not entitled for said possession.

5. Before the learned Judge, no oral evidence was let in by the parties. On the side of the petitioner, Exs.P1 to P16 were marked and on the side of the respondents, Exs.R1 to R8 were marked. The Court documents were marked as Exs.C1 and C2.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and documents relied on by the parties, closed the application for interim injunction holding that the rights of the parties can be decided in the suit.

7. Against the said order dated 21.04.2009 made in I.A.No.2062 of 2008, the petitioner filed C.M.A.No. 9 of 2009 on the file of the III Additional Subordinate Court, Cuddalore.

8. The learned Appellate Judge, considering the materials on record and order of the learned trial Judge, dismissed the appeal on the ground that prayer in the suit as well as interim application is one and the same and petitioner has not prayed for decree of declaration, when his title is in dispute.

9. Against the order of dismissal dated 21.11.2011 made in C.M.A.No.9 of 2009, the petitioner has filed the present civil revision petition.

10. Heard both sides and perused the materials on record.

11. The petitioner filed the suit for permanent injunction and mandatory injunction. The petitioner filed I.A.No.2062 of 2008 for temporary injunction pending suit. The petitioner has admitted that the District Revenue Officer granted patta only to the extent of 120 square meters and retained the remaining area as a common area for the general public. He also admitted that the respondents had entered into the said land and they are in possession. The respondents have stated that the disputed portion of the said land is being used for conducting last rites of the dead persons. In

addition to the above facts, prayer in I.A.No.2062 of 2008 and O.S.No.523 of 2008 are one and the same. The Courts below have rightly held that the rights of the parties can be decided only in the suit. There is no illegality or irregularity warranting interference by this Court with the order of the learned Appellate Judge, dated 21.11.2011.

12. In the result, this Civil Revision Petition is dismissed. The learned Principal District Munsif, Cuddalore, is directed to dispose of the suit in O.S.No.523 of 2008 as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

10.07.2017

Index : Yes/No

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V.M.VELUMANI, J.

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To

- 1.III Additional Subordinate Judge, Cuddalore.
2. The Principal District Munsif, Cuddalore.



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