



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2017

CORAM:

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THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

C.M.P. (MD) No.1684 of 2017
in
C.R.P. (MD) No.SR39171 of 2016

Rajan

... Petitioner

-vs-

1.Mohamad Ibrahim
2.Ojeer Bivi

... Respondents

PRAYER IN C.M.P. (MD) No.1684 of 2017: Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, to condone the delay of 20 days in preferring the civil revision petition.

PRAYER IN C.R.P. (MD) No.SR39171 of 2016: Civil Revision Petition is against the fair and decreetal order passed in I.A.No.639 of 2012 in O.S.No.186 of 2012 dated 21.08.2015 on the file of the District Munsif Court, Manapparai.

For Petitioner :Mr.H.Lakshmi Shankar

O R D E R

This application has been filed to condone the delay of 20 days in preferring the revision petition challenging the dismissal order passed in I.A.639 of 2012 in O.S.No.186 of 2012 on the file of the learned District Munsif, Manapparai.

2. The revision petition on the file of the District Munsif Court, Manapparai, was filed by the petitioner herein, who is the defendant in O.S.No.186 of 2012, and he had taken out an application immediately on receipt of the suit summons to reject the plaint under Order VII Rule 11 C.P.C., on the ground that the plaintiffs, who claim title over the suit property pursuant to the decree passed in O.S.No.223 of 1996, which was filed for specific performance, have not actually taken possession of the property and the Execution Petition filed by them, is still pending. In such circumstances, the plea of symbolic possession and based on symbolic possession seeking injunction against the defendant alleging that he is trying to trespass into the suit land, is not maintainable and only an illusionary cause of action was projected on the part of the plaintiff, while they themselves are not certain about the exact boundary of the suit property in the land.



3. The Trial Court after considering the submissions made by the revision petitioner herein and the respondents has concluded that admittedly, there is no document to show that the plaintiffs are having no right or title of possession over the suit property. Moreover such possession can be decided only after full trial. The point to be decided is whether there was an attempt to encroach upon the suit property as alleged in the plaint. Hence, the application to reject the plaint cannot be entertained.

4. Against the said finding and dismissal of the application, the revision petition is filed on the ground that admittedly the plaintiffs have not taken delivery of possession through court and E.A.No.38 of 2012 is pending. In such situation, if the plaintiffs complaint about any registration or delivery of possession by a third party, the procedure under Order 21 Rule 97, 98, and 99 C.P.C., has to be invoked. As against rival claims of the party, a separate suit is not maintainable, under Order XXI Rule 101, a separate suit is barred.

5. The facts and circumstances, pointed above, this Court is of the opinion the trial has failed to consider the petition. This Court after considering the submissions made before this Court by the counsel representing the revision petitioner and the respondents and after going through the pleadings as find that the plaintiff has obtained the decree filed for specific performance in O.S.No.223 of 1996. Pursuant to the decree, sale deed has also been executed by the Court on behalf of the land owner on 22.02.2012. Thus, title has passed to the plaintiff. For taking delivery of possession steps have to be taken by the plaintiff. Admittedly, no order has been passed in E.A.No.38 of 2012 and the same is pending. The averment as found in the plaint is that on 30.05.2012, the revision petitioner herein, who is the owner of the northern side of the suit land, has attempted to trespass into the suit property and remove the boundary. Thus, in the plaint, the cause of action, it appears that the factum of possession of the suit property has to be decided in the course of trial and not supplementary.

6. Therefore, in consonance to the ruling of the Hon'ble Supreme Court and this Court touching the issue regarding entertaining the petition under Order VII Rule 11 for rejection of plaint, this Court finds that there is no merit in the revision petition and the possession of the disputed property has to be considered and decided by the trial court after appreciating the evidence let in by the rival parties and it cannot be summarily decided.

7. Since, the fact regarding the possession has been traversed by the contesting parties, there is no scope to entertain the



petition under order VII Rule 11 of C.P.C. Hence, this C.M.P.(MD) No.1684 of 2016 is dismissed, Consequently, C.R.P.(MD)No.SR.39171 of 2016 is rejected at the SR stage it self. No costs.

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Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar

To

The District Munsif,
District Munsif Court,
Manapparai.

C.M.P. (MD) No.1684 of 2017
in
C.R.P. (MD) No.SR39171 of 2016
15.06.2017

DAS/MM

JM/KP/SAR 2/25.07.2017/3P/2C