



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) Nos.1058 & 1644 of 2015 (PD)

and

M.P (MD) No.1 of 2015

and

C.M.P. (MD) No.9603 of 2016

C.R.P (MD) No.1058 of 2015

1.Renjithabai
2.Kingsly
3.Stanly Shanmugham
4.Benshly Shanmugham ... Petitioners/Respondents/Plaintiffs

Vs.

1.Ayappan
2.Sasikala ... Respondent 1&2/Petitioners/Defendants-11 & 17
3.Murugan ... Respondent-3/Respondent-5/Defendant-7

PRAYER in C.R.P (MD) No.1058 of 2015: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decreetal order passed in I.A.No.772 of 2014 in O.S.No.237 of 2011, dated 20.01.2015 on the file of the Principal District Munsif and Judicial Magistrate Court, Eraniel and allow the Civil Revision Petition.

C.R.P. (MD) No.1644 of 2015

1.Renjithabai
2.Kingsly
3.Stanly Shanmugham
4.Benshly Shanmugham ... Petitioners/Respondents/Plaintiffs

Vs.

1.Ayappan ... Respondent-1/Petitioner/Defendant-11
2.Sasikala ... Respondent-2/Petitioner/Defendant 17

PRAYER in C.R.P (MD) No.1644 of 2015: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decreetal order passed in I.A.No.773 of 2014 in O.S.No.237 of 2011, dated 20.01.2015 on the file of the Principal District Munsif and Judicial Magistrate Court, Eraniel and allow the Civil Revision Petition.



For Petitioner in both CRP's : Mr.V.M. Balamohan Thampi

For R1 & R2 in both CRP's : Mr.T.Arul

For R3

in CRP.No.1058/2015 : No appearance

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O R D E R

The petitioners have filed these Civil Revision Petitions to set aside the order and decreetal order passed in I.A.Nos.772 & 773 of 2014 in O.S.No.237 of 2011, dated 20.01.2015 by the learned Principal District Munsif and Judicial Magistrate, Eraniel.

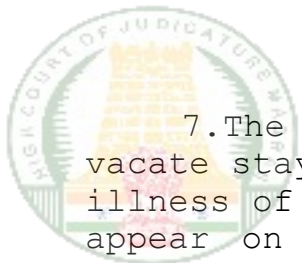
2.In C.R.P(MD)No.1058 of 2015, the petitioners are the plaintiffs, respondents 1 & 2 are the defendants 11 & 17 and the third respondent is the 7th defendant in the suit. The petitioners filed suit in O.S.No.237 of 2011, before the learned Principal District Munsif-cum-Judicial Magistrate, Eraniel for declaration and recovery of possession. The respondents entered appearance and filed written statement. Subsequently, the respondents 1 & 2 did not appear on 24.06.2014 and they were set ex-parte on that day. The respondents 1 & 2/defendants 11 & 17 were set ex-parte. They filed I.A.No.772 of 2014 in O.S.No.237 of 2011 to set aside the ex-parte order. According to the respondents 1 & 2, the first respondent is the husband of the second respondent and he was taking treatment for his illness and therefore, they could not contact his Advocate and appear before the Court on that day.

3.The petitioners filed counter and submitted that inspite of interim injunction granted by the Court, the respondents 1 & 2 are continuing their construction and have disobeyed the order of injunction. Only to harass the petitioners, the respondents 1 & 2 have filed the present application and prayed for dismissal of the application.

4.The learned Judge considering all the materials on record, allowed the application on condition that the respondents 1 & 2 to pay a sum of Rs.500/- as costs to compensate the petitioners.

5.Against the said order of allowing the I.A.No.772 of 2014, dated 20.01.2015, the petitioners have come out with the present Civil Revision Petition in C.R.P.1058 of 2015.

6.The learned counsel for the petitioners reiterated the grounds raised in the present Civil Revision Petition and submitted that the learned Judge by allowing the application to set aside the ex-parte order, has set aside the interim injunction without therein being any prayer for that. The learned Judge failed to see that order granting interim injunction is appealable order. The learned Judge ought to have seen that the Order 9 Rule 7 of the Civil Procedure Code is not applicable to the facts of the present case.



7.The respondents 1 & 2 filed detailed counter along with vacate stay petition and submitted that the respondents 1 & 2 due to illness of the first respondent could not contact their advocate and appear on the date of hearing. The respondents have given valid reason for setting aside the ex-parte order passed against them. The petitioners after three years of filing of the suit, filed an application for injunction and obtained interim stay and stopped the construction put up by the respondents 1 & 2. The learned Judge considered all the materials and allowed the application and compensated the petitioner by imposing the costs of Rs.500/-.

8.I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and also perused all the materials available on record.

9.The respondents 1 & 2 did not appear on the date of hearing on 24.06.2014 and an ex-parte order was passed against them. They filed I.A.No.772 of 2014 to set aside the ex-parte order giving reason for their non-appearance on the date of hearing. The learned Judge considering the reason given by the respondents 1 & 2 allowed the application on payment of costs of Rs.500/-. The learned counsel for the petitioner vehemently contended about disobedience of the respondents about the interim injunction granted by the Court and about the interim injunction being set aside, without there being any petition for the same. On consideration of all the materials on record, I hold that the respondents have given valid reason for their non-appearance on the date of hearing and application filed under Order 9 Rule 7 of the Civil Procedure Code. The learned Judge had allowed the application by giving valid reasons. In the circumstances, there is no illegality or irregularity in the impugned order warranting interference by this Court.

10.In the result, the C.R.P(MD)No.1058 of 2015 is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

11. C.R.P(MD)No.1644 of 2015 has been filed to set aside the order and decretal order passed in I.A.No.773 of 2014 in O.S.No.237 of 2011, dated 20.01.2015, by the learned Principal District Munsif and Judicial Magistrate, Eraniel and allow the Civil Revision Petition.

12.In view of the order passed in C.R.P(MD)No.1058 of 2015, C.R.P(MD)No.1644 of 2015 is disposed of by directing the learned Principal District Munsif-cum-Judicial Magistrate, Eraniel to dispose the suit in O.S.No.237 of 2011 as expeditiously as possible, in any event, not later than 30th June, 2017. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CO)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub-Assistant Registrar



To

The Principal District Munsif-cum-Judicial Magistrate,
Eraniel, Kanyakumari District.

+2 CC TO MR.T.ARUL,ADVOCATE,SR NOS.12049&12050

+1 CC TO MR.V.M.BALA MOHAN THAMPI,ADVOCATE,SR NO.11718

am

MAS/SV-MMS:23.03.2017:4P-5C

C.R.P. (MD) Nos.1058 & 1644 of 2015 (PD)
01.03.2017