



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.06.2017

CORAM

WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P (PD) (MD) No.956 of 2017

M.Chellapandy

.. Petitioner

Vs.

R.Sethuraman

.. Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decretal order dated 31.01.2017 passed in I.A.No.405 of 2016 in O.S.No.161 of 2016 pending on the file of the Sub-Court, Sivagangai and to set aside the same as illegal.

For Petitioner : Mr.G.R.Swaminathan
for Mr.N.Satheeshkumar

For Respondent : Mr.Sri Balaji for
M/s Vast Law Associates

ORDER

The revision petitioner has filed a suit for permanent injunction against the respondent herein on the premise that he has entered into sale agreement in respect of the suit property dated 16.06.2011. Pending completion of the sale process, land acquisition proceedings was initiated by the National Highways Authority which completed in the year 2014. The respondent having entered into agreement for sale and handed over the possession, tried to interfere with the possession and enjoyment pending completion of the sale process. Hence, reserving the right to file a suit for the specific performance based on the agreement dated 16.06.2011, the present suit came to be filed for permanent injunction and other reliefs along with an application under Order 2 Rule 3(2) seeking leave of the Court to file specific performance suit at a later point of time.

2.From the record, it appears that the trial Court has taken the suit filed for permanent injunction and assigned number as O.S.No.161 of 2016 and in respect of Interlocutory Application seeking leave to file specific performance suit at a later stage was kept pending for adjudication in I.A.No.405 of 2015 and was dismissed on 31.01.2017.



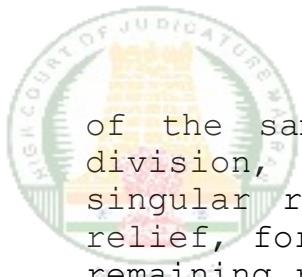
3. The learned counsel for the revision petitioner submitted that the trial Court ought not to have rejected this petition holding that he is not entitled to get relief under Order 2 Rule 3 (2) CPC. He would further submitted that due to the threat to his possession, he was forced to file a suit for permanent injunction immediately and along with the said suit, he has sought leave of the Court to file suit for specific performance at the later point of time which he is entitled to seek in the light of the provisions under Order 2 Rule 3 CPC.

4. The respondent who entered appearance as a caveator submitted that the relief of specific performance is hopeless and barred by limitation. The alleged agreement between the parties is of the year 2011 and there cannot be a leave by the Court permitting the plaintiff to initiate a time barred litigation under the guise of seeking leave to file suit for specific performance in the suit filed for the bare injunction. He would submit that an attempt has been made to cover up the delay and give life to a dead cause of action.

5. Heard both sides.

6. Perused the plaint, Interlocutory Application and the impugned order. It is seen that the suit for permanent injunction and the Interlocutory Application, both were presented before the Civil Court, on the same day, i.e., 22.06.2016. In the Interlocutory Application as well as plaint averments, there is a specific plea made by the revision petitioner that he is entitled for multiple reliefs namely, the relief of specific performance based on the sale agreement as well as injunction to protect the property. Since, the injunction relief was imminent, the suit for bare injunction reserving right to file the suit for specific performance has been filed. The trial Court should have either allowed the Interlocutory Application seeking leave to file specific performance suit at a later point of time or returned the plaint for omitting one of the reliefs which the petitioner is entitled under the said cause of action. Contrarily, the trial Court has numbered the injunction suit and proceeded further by causing summons to the respondent by doing so impliedly by the leave application is deemed to be accepted.

7. It is too late for the trial Court to dismiss the Interlocutory Application that to on the ground that the relief of specific performance is barred by limitation. The issue of limitation cannot be summarily decided, being a mixed question of fact and law. Therefore, this Court is of the opinion, that when the law enables a litigant to reserve these rights to seek one or more relief arising out of the same cause of action at the later point of time and pursue the remaining relief alone with the leave of the Court, such litigant cannot be deprived of exercising such right. If at all, the Court is of the opinion that all the reliefs arising out



of the same cause of action should be considered without any division, it should not have entertained the suit filed for the singular relief. Having entertained the suit filed for singular relief, for bare injunction but depriving the petitioner to seek the remaining relief will lead to miscarriage of justice.

WEB COPY

8. Therefore, the order passed by the Trial Court in I.A.No.405 of 2016 is set aside. Accordingly, this revision petition is allowed and leave is granted. If a suit for specific performance is filed, the respondent herein, is entitled to challenge the suit, on all grounds including point of limitation. No costs.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Sivagangai.

+ 1 CC TO Mr.N.SATHEESH BABU, ADVOCATE IN SR No. 60129

MRN/MM

TE/MR/SAR-I : 30/06/2017 : 3P/3C

C.R.P(PD) (MD) No.956 of 2017
14.06.2017