



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2017

CORAM:

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

C.R.P (MD) No.301 of 2016

and

C.M.P. (MD) .Nos.1266 of 2016 and 3048 of 2017

WEB COPY

C.Irudhaya Sundararaj

.. Petitioner

Vs.

1.F.T.Jose

2.A.Partholomia

.. Respondents

Prayer: This Civil Revision Petition is filed under Section 227 of the Constitution of India to set aside the impugned order dated 11.01.2016 passed in I.A.No.3 of 2016 in O.S.No.3 of 2016 on the file of the Principal District Munsif, Dindigul and allow the Civil Revision Petition.

For Petitioner

: Mr.Y.Krishnan

For Respondents

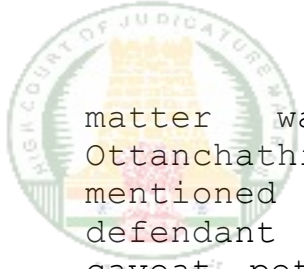
: Mr.M.P.Senthil

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 11.01.2016, passed in I.A.No.3 of 2016 in O.S.No.3 of 2016, on the file of the learned Principal District Munsif, Dindigul.

2.The revision petitioner is the plaintiff in O.S.No.3 of 2016, on the file of the learned Principal District Munsif, Dindigul. Along with the suit for permanent injunction, the plaintiff has taken out an Interlocutory Application for interim injunction and the same has been numbered as I.A.No.3 of 2016 and taken up for hearing on 05.01.2016. The trial Court, on considering the pleadings, has granted an interim injunction and posted the matter for hearing on 11.01.2016 with a direction to comply with the conditions imposed under Order 39 Rule 3 of the Code of Civil Procedure. It appears that on the day when the ex-parte interim order was granted, the defendant's caveat petition was numbered, but the same was not brought to the notice of the Presiding Officer.

3. It is contented by the revision petitioner that when the application was numbered, there was no caveat and accordingly, endorsement was made by the learned counsel and also verified by the Court Officer and thereafter only, the trail Court passed the interim order, after considering the balance of convenience. The issue before this court in the revision petition is that on 11.01.2016, the Presiding Officer of District Munsif Court, Dindigul, was on other duty. Since there was no sitting, the



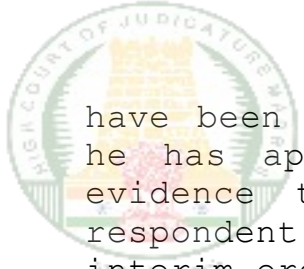
matter was called before the learned District Munsif, Ottanchathiram, who was in-charge of the Court on that day. It was mentioned before the learned District Munsif, Ottanchathiram, defendant about the pendency of Caveat Petition, suppression of caveat petition and passing of interim order, without serving notice to the caveator.

4. Further, it was also observed by the Presiding Officer that the revision petitioner herein, after getting interim order, has not paid batta and batta memo has been returned. For all these reasons, the interim order granted on 05.01.2016 was vacated and the matter was posted for enquiry by 05.02.2016. From the notes paper, it also appears that on the same day, the first respondent has filed a counter and the same has been adopted by the second respondent.

5. The grievance of the revision petitioner is that when an endorsement regarding caveat petition was made by the learned counsel, the so-called caveat petition, which is alleged to have been filed on 22.12.2015, was not numbered and they were not aware of the caveat petition. Therefore, there is no suppression of material fact in making endorsement that no caveat is filed. The second contention raised by the revision petitioner is that even if the Court had prima facie been convinced about the pendency of caveat petition, he should have been given an opportunity before vacating the interim order. It is also submitted by the learned counsel for the revision petitioner that the batta, which was filed immediately, after interim order, was returned and the same was re-presented on 07.01.2016. While so, the Court should not have taken adverse notice as if the revision petitioner has not complied with order 39 Rule 3 of the Code of Civil Procedure.

6. It is also contended by the learned counsel for the revision petitioner that the schedule of property as shown in the caveat petition differs from the schedule of property as found in the plaint and therefore, even if there is any caveat filed, it does not pertain to the suit property. Hence, the respondents herein are not entitled for advance notice in the application.

7. This Court, after giving anxious consideration to the submissions made by the respective parties, the documents and the records of the Court below, finds that the trial Court, while granting interim order, has stated that Document Nos.2 and 3 show the petitioner's title over the property only to the extent of 378.97 sq.ft, whereas, the second respondent has alienated more than that through Document No.5. Hence, prima facie case has been made out. Since the counter has already been filed as early as on 11.01.2016, there is no necessity for the revision petitioner herein to rush to the High Court by way of revision petition and to stop all further proceedings by way of an interim stay. If at all he has any merit in his Interlocutory Application, it could



have been agitated before the trial Court on merits and instead, he has approached this Court, that too, when there is enough evidence to show that the filing of caveat petition by the respondent has not been reflected in the application and the interim order was passed, without notice to the caveator.

8. Since prejudice will be caused, this Court restrains itself from explicitly pointing out in detail the error committed by the petitioner in suppressing the receipt of caveat notice and violation of procedure and in rushing to this Court by way of Civil Revision Petition under Article 227 of the Constitution of India. As the revision petitioner has wasted his own time and has delayed the process of adjudication for more than one year, this Court is not inclined to keep this matter pending any further. Hence, this revision petition is dismissed. It is open to the parties concerned to agitate the matter on merits in I.A.No.3 of 2016 in O.S.No.3 of 2016. The trial Court shall take up the matter on priority basis as early as possible and decide the issue.

9. Since the revision petitioner has abused the process of this Court by filing the revision petition under Article 227 of the Constitution of India, instead of redressing his remedy before Trial Court, revision petition is dismissed with cost of Rs.5,000/- [Five Thousand only] payable by the revision petitioner to the respondents herein.

Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1 The Principal District Munsif,
Dindigul.
- 2 The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.M.P.SENTHIL, Advocate SR.No.54280
+1cc to M/S.Y.KRISHNAN, Advocate SR.No. 21221

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