



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.12.2017

Pronounced on : 11.12.2017

WEB COPY

Coram:

The Hon'ble Dr. Justice G. JAYACHANDRAN

Rev. Aplc. (MD) No. 171 2017

and

C.M.P. (MD) No. 7565 of 2017

Syed Sulthan Beevi @ Bashiriya .. Petitioner /Petitioner

/versus/

1. Umar Hayam

2. Sheik Abdul Kadhar

3. Piyari John

4. S. Ajiya Banu

.. Respondents /Respondents

Review Application is filed under Order 47 Rule 1 and 3 r/w Section 114 of C.P.C., praying to set aside the order rendered by the Hon'ble Court in C.R.P.No.959 of 2017 dated 16.06.2017 and to allow the review application.

Prayer in CRP(MD). 959/ 2017 :

Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating with the executable order and fair order Dated 09.12.2016, made in I.A.No.741/2016 in O.S.No.509/2016 on the file of Principal District Munsif, Madurai Town and to set aside the order of status quo.

For Petitioner : Mr. R. Suriyanarayanan

O R D E R

This case is taken up for hearing through Video Conferencing, at the instance of the learned counsel appearing for the petitioner.

2. This review petition is filed on the premises that the dismissal of C.R.P.No.959 of 2017, in the absence of the petitioner, saying that there is an appeal remedy against the order passed under Order 39, Rule 1 CPC, without noting the fact that there is no appeal against the order of status quo, is



erroneous and therefore, it is liable to be reviewed.

3. Heard the learned counsel appearing for the petitioner and perused the review application.

4. In an interlocutory application filed by the plaintiff/petitioner for interim injunction, the trial Court, after hearing both sides, has found that after obtaining an ex-parte interim order, the petitioner/plaintiff had put up construction in the portion, which is subject matter of the main suit. Therefore, while disposing the interlocutory application, the trial Court has directed the plaintiff/petitioner to maintain *status quo* and shall not put up any further constructions in the 3 ½ feet north south breadth in the entire northern side of the suit property, till the disposal of the suit and the earlier interim order granted stands vacated.

5. When the revision was preferred under Article 227 of the Constitution of India before this Court, it was brought to the notice of the Court by the learned counsel appearing for the respondents that order passed under Order 39, Rule 1 CPC, is an appealable order under Order 43, Rule 1(r) of CPC and the petition filed under Article 227 of the Constitution of India by invoking supervisory jurisdiction of the High Court is not maintainable. When the case was listed for hearing, the learned counsel appearing for the petitioner did not appear. On perusing the records, this Court has dismissed the revision petition on the ground of maintainability of revision under Article 227 of Constitution of India.

6. Today, when the review application was taken up for consideration through Video Conferencing, learned counsel appearing for the petitioner submitted that it is not a final order passed in the interlocutory application filed under Order 39, Rule 1 CPC. Hence, Article 227 of the Constitution of India alone is the remedy available for the aggrieved party.

7. This Court finds that the trial Court has not merely ordered to maintain *status quo*, it has also restrained the petitioner herein from putting up any further construction in the disputed area, till the disposal of the suit. The trial Court has also given reason that by mere dismissal of the interlocutory application will not prevent the petitioner from destroying the physical feature of the property and therefore, restrained order is necessary. Hence, it is a reasoned order and not mere order of *status quo*.

8. The learned counsel appearing for the petitioner relying upon the judgment of this Court reported in **K. Nargarajan vs. R. Radha and K. S. Ramasamy [2003(1) CTC 454]** submitted that in this



nature of petition, under Article 227 of Constitution of India is maintainable. When a statute provides a particular redressal under a specific provision of law, the litigants cannot choose according to their convenience and resort supervisory jurisdiction of the Court under Article 227 of the Constitution of India. While Order 43 Rule 1(r) of CPC specifically provides appeal remedy against the order passed under Order 39, Rule (1) and (2) of CPC, the aggrieved party shall only resort to that provision alone. When the reasoned order is passed finally by the trial Court, after hearing both sides, the plea raised by the review petitioner that the trial Court order is only to maintain *status quo*, is contra to the fact. Hence, this application is liable to be dismissed.

9. Accordingly, this Review Application is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Madurai.

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AE/JC/SAR4/03.01.2018/3P/2C

order made in
Rev.Aplc (MD) No.171 of 2017
against
C.R.P. (MD) No.959 of 2017
11.12.2017