

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.2187 of 2012

&

M.P.No.1 of 2012

T.K.Krishnan

... Petitioner

Vs

1.Yasothammal

2.Yagneshwaran

3.Logeshwaran

4.Dr.P.Deivendran

5.M.Kartheeswaran

6.J.Mahalingam

7.R.Vijayarajeswaran

8.V.Revathy

9.S.Sumitra Srinivasan



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10.Dhaneshwaran

11.Kalaivani

12.Kalaiselvi

13.Sasirekha ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 09.08.2011 passed by the Additional District Munsif, Alandur in I.A.No.1929 of 2010 in O.S.No.650 of 2010.

For Petitioner : Mr.V.Vijayabaskar

For Respondents 1 to 3 : Mr.Poovender Perumal
for Sai Bharath & Ilan

For Respondent 4 : Mr.Pon Ram Raja

For Respondents 5 to 13 : Given up

ORDER

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This Civil Revision Petition is filed challenging the order of the learned Additional District Munsif, Alandur in allowing an

application filed under Section 10 of the Code of Civil Procedure by the first respondent herein in I.A.No.1929 of 2010 in O.S.No.650 of 2010.

The facts in brief are as follows:

2.The respondents 1 to 3 herein have filed a suit O.S.No.92 of 2001 against 28 defendants for a permanent injunction restraining these defendants from interfering with their peaceful possession and enjoyment of the suit A schedule property which was an extent of 1 acre and 40 cents in new Survey No.117/26 at Okkiam Thoraipakkam village and for a mandatory injunction directing the defendants 15 and 16 to demolish the illegal construction put up by them in the B and C Schedule properties respectively. The B and C Schedule properties were portions of the A schedule property. The respondents 1 to 3 had claimed right through one A.C.Shriram, who was the husband of the first respondent and father of respondents 2 to 3. Being his children,

it was their case that A.C.Shriram had been allotted an extent of 4 acres and 55 cents in a partition entered into between him and his brother on 15.03.1975. Out of the said extent, A.C.Sriram during his life had sold an extent of 2 acres and 31 cents to various parties and 22 cents towards road access, after which he was left with an extent of 2.07 acres. It was their case that said A.C.Sriram died on 20.02.1999, leaving behind respondents 1 to 3 and respondents 10 to 13 herein as his legal heirs. They had thereafter sold portions of the property and were ultimately left with an extent of 1.40 acres, which is A Schedule property. It was their case that the 10th respondent herein had entered into an agreement of sale with the 6th respondent herein on 13.12.1994, with reference to the suit schedule property, despite the fact that he did not have any independent right to the property. The 10th respondent, according to the respondents 1 to 3, had misrepresented that they were power agents of respondents 1 and 2 herein. They would contend that despite their request for partition, the 10th respondent was not coming

forward to partition the property. They would further contend that the 6th respondent herein had been obtaining sale deeds from the 2nd respondent which they would contend is not binding on them. They would further contend that the purchasers from the 10th respondent was attempting to put up construction that had constrained them to file the suit O.S.No.92 of 2001.

3.In the year 2010, the revision petitioner herein had purchased a portion of the property from the 4th respondent herein, who in turn had purchased it from the 6th respondent in the year 2002. The 6th respondent in turn had purchased the said property from the respondents 6 to 9 herein. The revision petitioner was also tracing title from the said A.C.Shriram. The revision petitioner would contend that after the purchase, he had obtained the revenue records mutated in his name and he had also obtained necessary building permission for construction in the premises. The revision petitioner had also obtained electricity connections and he started to put up the construction

after obtaining house loan from IDBI Bank.

4. When he was midway constructing, the third respondent herein together with henchmen and gundas trespassed into the property and attempted to stall the construction activity. Immediately, the revision petitioner had rushed to the police station to put a complaint, but the respondents being influential people, the Police were not willing to register the complaint. Therefore, left with no other alternative, the revision petitioner had filed the suit O.S.No.650 of 2010 for bare injunction in respect of an extent of 1,200 sq.ft. in survey No.117/26D2A at Okkiam Thoraipakkam village. The plaintiffs in O.S.No.92 of 2001 were arrayed as defendants 7 to 9 in the suit. After receiving summons in the above suit, the respondents 1 to 3 herein filed impugned interlocutory Application in I.A.No.1929 of 2010. In the affidavit filed in support of the said application, they would submit that the suit O.S.No.92 of 2001 which was filed by them is in trial stage and that the 27th defendant in that

suit had sold the property to the 4th respondent who in turn had sold the same to the revision petitioner under the sale deed dated 24.08.2009. He would submit that the revision petitioner had purchased the property unlawfully and he also fraudulently obtained an order of status quo in O.S.92 of 2001. He further contended that since the parties and the issues are one and the same and the suit filed by them both in O.S.No.92 of 2001 time prior to the second suit O.S.No.650 of 2010 cannot be proceeded with as it would result in completing Judgment and farewell proceedings. The revision petitioner had vehemently opposed the said application stating that he had filed status quo order granted by the Court on several occasions and caused heavy damages and that the suit O.S.No.92 of 2001 is not maintainable. He also contended that the respondents 1 to 3 herein had filed suit wishing the property as vacant land, wherein, construction have been put up in the vacant land. Therefore the revision petitioner had sought for the dismissal of the application.

5. After hearing both parties, the learned Additional District Muncif, Alandur by her order dated 09.08.2011 proceeded to allow the petition. The learned Judge would state that a larger extent of property in question is same in both the suits and the revision petitioner was *pendente lite* purchaser and that if the second suit is allowed to go on, it would result in conflicting Judgments. This order has been challenged by revision petitioner herein.

6. Heard Mr. Vijayabaskar, learned counsel for the petitioner, Mr. Poovender Perumal, learned counsel for the respondents 1 to 3 and Mr. Pon Ram Raja, learned counsel for 4th respondent.

7. Mr. Vijayabaskar, learned counsel would submit that the suit O.S.No.92 of 2001 has been pending for arguments since 2005 and thereafter since the revision petitioner had filed an application for impleading himself in the proceedings, the matter

has been pending and evidence has also been taken by the revision petitioner in the said matter.

8. After hearing the submissions of the learned counsel and perusing the papers, it is clearly evident that the subject matter and parties are same in both the suit and in the earlier suit O.S.No.92 of 2001, there are some more defendants who are not parties in O.S.No.650 of 2010.

Section 10 of the Code of Civil Procedure reads as follows:

"10. Stay of Suit.-No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

9. Therefore, considering the above provision, the fact that the subject matter and the parties are same and the fact that O.S.No.92 of 2001 is earlier in point of time, I find no infirmity in the order passed by the learned Additional District Munsif, Alandur. In the result, this Civil Revision Petition is dismissed. Taking into account the fact that the suit O.S.No.92 of 2001 has been pending for over 17 years, I direct the learned Additional District Munsif, Alandur to dispose of the said suit within a period of 3 months from the date of receipt of a copy of this Order. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

10.10.2018

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Index : Yes/No

Speaking order/non-speaking order

To

The learned Additional District Munsiff,
Alandur.

P.T.ASHA, J.,

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