

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10-01-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.PD.No.4397 OF 2017

S.Sambandham

...

Petitioner

-VS-

1.C.Suseela

2.C.Damodaran

3.C.Sampathkumar

4.P.Chandrasekar @ Chandrasekaran ...

Respondents

Petition against the order, dated 10.11.2017, made in I.A.No.947 of 2017 in O.S.No.941 of 2015, on the file of Principal District Munsif, Alandur.

For petitioner : Mr.S.Thangavel

For respondents : Mr.Silambanan,
Senior Counsel,
for M/s.Kaavya Silambanan Associates.

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ORDER

The parties herein have a dispute over the title and possession of the suit property. Both the parties claim title on the basis of documents, according to which, they are in possession and enjoyment of the property. When the petitioner/plaintiff filed a suit, challenging the settlement deed executed by the defendants, an application for

appointment of an Advocate Commissioner was made, following which, the trial Court appointed an Advocate Commissioner, which was challenged in C.R.P.PD.No.299 of 2017 on the file of this Court. In the meanwhile, the respondents have cancelled the settlement deed. On the submissions made by both the parties, this Court felt that the requirement of Advocate Commissioner did not survive and, accordingly, disposed of the said Civil Revision Petition, directing the parties to work out their remedy in the manner known to law. But, the respondents have executed another settlement deed. Therefore, the petitioner/plaintiff filed an amendment petition, following the principle laid down by the Hon'ble Supreme Court in the case of *Rajesh Kumar Aggarwal v. K.K.Modi*, 2006 (4) SCC 385, to prosecute the case against the fresh settlement deed, which is a continuous cause of action. The trial Court dismissed the said petition for amendment, on the ground that amendment would give rise to a fresh cause of action in favour of the petitioner and, therefore, a fresh suit had to be laid. The said order of dismissal has been challenged in this Civil Revision Petition.

2. Earlier, this Court had passed an interim order, directing the parties and also the trial Court not to precipitate the issue till the disposal of this Civil Revision Petition. In the meanwhile, it is brought to the notice of this Court by the respondents, that the petitioner, with the aid of police, has interfered with the possession of the respondents and demolished the structures and also put up a compound wall around the property, preventing the access to their residence. On the contra, the petitioner has stated that it is only a vacant site, having a motor-shed, and the respondents are not at

all residing in that place. The petitioner would also submit that since he had the benefit of interim order, he put up a compound wall in the property. There are other allegations also against each other.

3. In such circumstances, this Court has directed the parties to file an affidavit of undertaking to maintain status quo till the disposal of the suit by the trial Court. Since the issue involved is a civil dispute, it is not desirable that police intervene in the matter and the matter shall also be converted into a criminal case. Accordingly, the parties have undertaken that they will not bring interference through police or some other third parties into the civil dispute till the disposal of the suit. The parties have also undertaken before this Court that they will not indulge in any criminal activities or high-handedness, assaulting each other, claiming title over the suit property. Both the parties have undertaken to file an affidavit of undertaking to maintain status quo as also peace and harmony on the issue, till the trial Court decides the issue of title over the suit property.

4. In view of the extraordinary circumstances, this Court is inclined to appoint an Advocate Commissioner to find out the present status and note down the physical features of the suit property. Accordingly, Mr.N.Eugene Alprine Dinesh, Advocate, is appointed as the Advocate Commissioner, who shall inspect the property today itself, and both the parties can depute their counsel during such inspection. The Advocate Commissioner is directed to inspect the property, note down the physical features of the property and submit a report before the Principal District Munsif Court,

Alandur, in O.S.No.941 of 2015. Remuneration of the Advocate Commissioner is fixed at Rs.75,000/- (Rupees Seventy Five Thousand only), which shall be paid in equal proportions by both the parties.

5. In the given situation, this Court directs the trial Court to dispose of the suit on merit within a period of one month from the date of receipt of report of the Advocate Commissioner. As discussed above, following the dictum laid down by the Hon'ble Supreme Court in *Rajesh Kumar Aggarwal's* case, cited supra, the petitioner is entitled to amend the plaint and prosecute the case, on the continuing cause of action.

6. Civil Revision Petition is allowed accordingly. No costs. Consequently, the connected C.M.P.No.20917 of 2017 is closed.

10-01-2018

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking

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To

Principal District Munsif,
Alandur.

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M.GOVINDARAJ,J.

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