



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P(MD)No.208 of 2018 (PD)

and

C.M.P(MD)No.913 of 2018

1.Rajendra Prasad

2.Satheesh

... Petitioners/Petitioners/Defendants

Vs.

1.Thankappan Pillai

2.Janaki

3.Banu

4.Shylaja

5.Balaji

... Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to pass an order setting aside the fair and decreetal order dated 23.11.2017 passed in I.A.No.329 of 2017 in O.S.No.173 of 2015 on the file of the Principal District Munsif Court, Padmanabhapuram, and allow the same.

For Petitioner : Mr.K.Gokul

For Respondents : Mr.V.H.S.Prathap

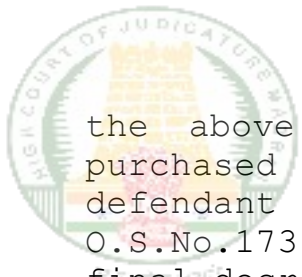
ORDER

This Civil Revision Petition has been filed challenging the order dated 23.11.2017 made in I.A.No.329 of 2017 in O.S.No.173 of 2015 on the file of the Principal District Munsif Court, Padmanabhapuram.

2. Heard the learned Counsel for the petitioner as well as the respondents and perused the materials available on record.

3. The facts of the case, in nutshell, are as follows:

The respondents /plaintiffs have filed a suit in O.S.No.173 of 2015 seeking the relief of recovery of damages. The petitioners are the defendants in the suit. The suit in O.S.No.38 of 1972 was filed for partition in the year 1972 and preliminary decree was passed and now final decree application is pending in I.A.No.7 of 2014. The plaintiffs in this suit are parties to



the above said suit. The plaintiffs in O.S.No.173 of 2015 purchased the property from one Krishnaprasad, who is the third defendant in the above said partition suit. So, suit in O.S.No.173 of 2015 has to be stayed until the disposal of the final decree application in I.A.No.7 of 2014 in O.S.No.38 of 1972.

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4. The respondents/plaintiffs, through their counter affidavit denied all the averments made in the affidavit. The plaintiffs are not parties to the suit for partition. The plaintiffs in this case filed a suit in O.S.No.113 of 1997 against the first defendant in respect of the suit schedule property item No.1. One Naganpillai also filed a suit in O.S.No.144 of 1997 against the first defendant herein and both the suits were decreed on 25.04.2000. The title and possession of the plaintiffs were already declared. The final decree application will not affect the plaintiffs' right in the suit schedule item Nos.1 and 2. This petition is filed only to drag on the proceedings and hence, prayed for dismissal.

5. It is seen from the records that the plaintiffs filed two suits against this petitioners. In that suit the plaintiffs got the decree of declaration with respect to the title and possession. On the basis of the declaration decree, this present suit for damages is filed. Admittedly the earlier suit was decided, only final decree application is pending and the present suit is filed for damages. There is no common issues involved to stay the proceedings of the suit. The earlier partition suit is of the year 1972. The only contention of the petitioner is that the suit schedule property is an undivided one. But the title was already declared in O.S.Nos.113 and 144 of 1997 and therefore, the contention of the petitioner cannot be accepted by this Court.

6. The trial court, after analysing the entire facts and circumstances of the case, has rightly dismissed the petition filed by the petitioner. In the light of the above facts, I do not find any perversity or illegality in the order impugned in this revision. Considering the facts and circumstances of this case, the learned Trial Judge is directed to dispose of the suit as early as possible.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The learned Trial Judge is directed to dispose of the suit within six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-III)



To

The Principal District Munsif,
Padmanabhapuram.

+ 1 cc TO Mr.V.H.S.Prathap , Advocate in SR No. 45694

rm

AE/SKN RSK/SAR2/15.02.2018/3P/3C

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