



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P (MD) No.357 of 2018 (PD)

and

CMP (MD) No.1607 of 2018

1.Gandhimathi
2.Annadurai
3.Bharathiraja
1 to 3

..Petitioners/Petitioners/Defendants

Vs.

1.S.Jeyanthi
2.Srinivasan
3.The Commissioner,
Karur Municipality,
Azad Road, Karur Town,
Karur District.

..Respondents 1 & 2/Respondents 1 & 2/
Plaintiffs

...3rd Respondent/3rd Respondent/
4th defendant

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 09.01.2018 passed in I.A.No.255 of 2017 in O.S.No.18 of 2017 on the file of the Additional District Munsif Court, Karur and to allow the same.

For Petitioners : Mr.R Subramanian

For Respondents : Mr.G.Balaji - R.1 & 2

ORDER

This Civil Revision Petition has been filed challenging the order dated 09.01.2018 passed in I.A.No.255 of 2017 in O.S.No.18 of 2017 on the file of the Additional District Munsif Court, Karur.

2. Heard the learned Counsel on either side and perused the materials available on record.

3. The Revision Petitioners are the defendants 1 to 3 in the suit in O.S.No.18 of 2017. The said suit was filed for the relief of permanent injunction in respect of the 'B' Schedule lane restraining the defendants 1 to 3 from raising any construction in the 'B' Schedule lane by obstructing the passage of plaintiff in 'B'



Schedule lane and for the relief of mandatory injunction to remove the bore well installed by the revision petitioner in the common lane.

4. It is admitted that the plaintiff is having title in respect of the suit 'A' schedule property. According to the plaintiff, 'B' schedule property is a municipal lane, which is required for the public to have access. Since there was an attempt made by the defendants to obstruct this lane and that the bore-well has been dug by the defendants, the plaintiff has filed the suit for the above said reliefs. The revision petitioners, who are the defendants 1 to 3, have filed an Interlocutory Application in I.A.No.255 of 2017 under Order 7 Rule 11 of the Code of Civil Procedure, to reject the plaint.

5. The main contention of the revision petitioners before the lower Court is that another suit filed by the revision petitioners in respect of the very same lane is not yet numbered, relying upon a Circular regarding the maintainability of the suit against the local body. Since, the suit filed by the revision petitioners has not been numbered, it is contended that the present suit filed by the respondents cannot be entertained. It is stated that in view of the specific Circular, the plaint in the present suit in O.S.No.18 of 2017 has to be rejected.

6. The Trial Court, after considering the position that the bar of jurisdiction to entertain a suit by Civil Court is only against local body, challenging an action to remove encroachment or for demolition of unauthorized construction, dismissed the petition stating that the suit filed by the respondents 1 and 2 is not barred by any statute and that the petition for rejection of plaint is not legally sustainable. Challenging the said order, the present Civil Revision Petition has been filed by the petitioners.

7. The learned Counsel appearing for the petitioners, in support of his contention, has relied upon Paragraph No.6 of the plaint, which reads as follows:

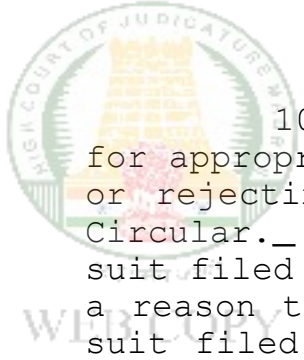
"6. The plaintiff respectfully submits that the real dispute arises only in the B schedule common lane. In the said B schedule property the defendants without obtaining any permission neither from the plaintiff nor from the Municipality Officials had digged in the common B schedule Lane in front of the A schedule property and install the Bore well underneath the B schedule Common Lane on the 1st week of December 2016. Not stopping with that the defendants 1 to 3 had again on 09.01.2017 with their men and his force had dig and buried the soil to put basement for raising further construction in the Public common pathway without hearing the objection raised by the plaintiff. The defendants illegal activities had totally obstructed the passage of plaintiff in the B



schedule property. Taking advantage of the weaker section the defendants 1 to 3 also make speedy methods to raise further construction which causes great loss and hazards to the plaintiff in enjoying the suit A schedule property and also trying to encroach a portion of the Public Municipal Lane. The fourth defendant is the authorized authority in maintaining the B schedule lane; hence the fourth defendant is also added as a necessary party to the suit to get a valid and binding adjudication. If the defendant 1 to 3 had achieved in their object means the plaintiffs will lost his respective share property."

8. A reading of the averments made in the whole plaint filed by the first and second respondents, who are the plaintiffs in the suit, would show that there is an alleged encroachment in the public lane by the defendants and the defendants have illegally encroached and obstructed the passage, which was described as 'B' Schedule property. Admittedly, 'B' Schedule property is claimed to be a Public Municipal Lane. Thus, the encroachment by anyone in the public property affects the right of persons, who are entitled to use the same as pathway or public lane. The suit is not barred by any of the provisions of the District Municipalities Act or the Circular, which was referred to by the petitioners. It is contended that as per the judgment reported in 2006 (4) CTC - 483 in the case of *Consumer Action Group, rep. by its Trustee and others Vs. The State of Tamil Nadu, rep. by its Secretary and others*, the suit is barred. It has been held by this Court that no Civil Court shall entertain any suit or proceedings or Application in respect of action taken by CMDA or Corporation or Municipality in respect of illegal construction and encroachments on roads and pavements. The judgment of this Court relied upon by the petitioners is not applicable in this case. The suit in the present case is not in respect of any action that is contemplated under the District Municipalities Act or any other statutes either for removal of encroachment or for demolition of unauthorized construction. Unless, the Civil Court's jurisdiction is expressly or impliedly ousted by a statutory provision, the suit cannot be dismissed on the ground of want of Civil Court's jurisdiction.

9. The contention of the learned Counsel for the petitioners in this case cannot be accepted and the plaint cannot be thrown out at this stage. Coming to the submission of the learned Counsel for the petitioners that a similar suit filed by the petitioners is not numbered citing a Circular, it is seen that the circular was issued pursuant to the judgment referred to above. The petitioners 2 and 3 herein are the plaintiffs in the suit and they have denied the existence of any municipal lane and sought for injunction against the local body restraining the local body from interfering with their peaceful possession and enjoyment.



10. It is open to the petitioners to approach this Court for appropriate direction or to challenge the order either returning or rejecting the plaint filed by the petitioners on the basis of Circular._ However, the failure of the lower Court in numbering the suit filed by the petitioners on the basis of the Circular cannot be a reason to reject the present plaint in this case. Even in the suit filed by the petitioners, if it is shown that the prayer for injunction against local body is in respect of any portion or lane or street vest with municipality, the suit will be dismissed as barred.

11. In view of the above, it is seen that the trial Court, after analysing the entire facts and circumstances of the case, has rightly dismissed the petition. Thus, I do not find any perversity or illegality in the order challenged in this revision.

12. In the result, the Civil Revision Petition is dismissed and the order dated 09.01.2018 passed in I.A.No.255 of 2017 in O.S.No.18 of 2017 on the file of the Additional District Munsif Court, Karur is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The Additional District Munsif Court,
Karur.

2.The Commissioner,
Karur Municipality,
Azad Road, Karur Town,
Karur District.

+One cc to M/s.R.Subramanian, Advocate, SR.No.50436

+One cc to Mr.G.Balaji, Advocate, SR.No.51142

rm

RL/5C/4P/CVC/SAR1/19/3/2018

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