



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.607 of 2018

and C.M.P. (MD) .No.2701 of 2018

1.Kittu

2.Ganapathy

3.Palaiya

4.Velayutham

5.Mani

6.Kamaraj

.. Petitioners/Petitioners/Plaintiffs

/Vs./

Santhanaraj

.. Respondent/Respondent/Defendant

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.01.2018 passed in I.A.No.114 of 2018 in O.S.No.590 of 2013 on the file of the learned I Additional District Munsif, Tirunelveli.

For Petitioners: Mr.V.Balaji

For Respondent : Mr.M.P.Senthil

O R D E R

O.S.No.286 of 2006 on the file of the I Additional District Munsif Court, Tirunelveli was filed by the revision petitioners herein. Preliminary decree was passed therein. Questioning the same, the defendants in the said suit filed A.S.No.90 of 2011 before the Additional Sessions Judge, Tirunelveli. The said appeal is due for final hearing on 23.11.2018. The respondent herein is a subsequent purchaser in respect of a portion of the suit property set out in O.S.No.286 of 2006 from the sixth and seventh defendants therein. Since the respondent herein attempted to put up construction, the revision petitioners filed O.S.No.590 of 2013 before the I Additional District Munsif, Tirunelveli. In the said suit, I.A.No.114 of 2018 was filed seeking stay of subsequent suit proceedings. The court below by order dated 25.01.2018 dismissed the said Interlocutory Application. Questioning the same, this Civil Revision Petition has been filed.

2. Heard the learned counsel on either side.

3. The revision petitioners, who are the plaintiffs in the first suit, chose to institute second and subsequent suit namely, O.S.No.590 of 2013 against the subsequent purchaser seeking the relief of bare injunction. The trial in the subsequent suit is over.

4. Even though the second suit was filed in the year 2013, an application under Section 10 C.P.C was filed only in the year 2018. This Court cannot appreciate the delay in filing the said



application. That apart, when the suit is based on a subsequent cause of action, the question of staying the subsequent suit will not arise. The court below rightly dismissed I.A.No.114 of 2018. Therefore, this Court is not inclined to interfere with the order of the court below.

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5. At this stage, the learned counsel appearing for the revision petitioners submitted that the first appeal filed against the preliminary judgment and decree made in O.S.NO.286 of 2006 was already argued and the matter is posted for judgment. At this time, due to transfer of the Presiding Officer, the matter has to be argued once again and the matter was posted on 23.11.2018. It goes without saying that any judgment in the first appeal in A.S.No.90 of 2011 on the file of the Additional Sessions Judge, Tirunelveli would definitely facilitate better adjudication in O.S.NO.590 of 2013. This is more so because the defence has been taken out by the respondent that till the disposal of the appeal. The plaintiffs would not have any right to maintain the subsequent suit. However, the trial court cannot be called upon to indefinitely wait for the disposal of the appeal. In this view of the matter, even while dismissing the Civil Revision Petition, the court below is directed not to take up O.S.No.590 of 2013 for argument till 07.12.2018.

6. With this direction, this Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P.(MD) No. 2701 of 2018 is also dismissed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-III)

To,

1.The Additional Sessions Judge,
Tirunelveli.

2.The I Additional District Munsif,
Tirunelveli.

Copy to

The Section Officer, 2 COPIES

V.R.Section, Madurai Bench of Madras High Court, Madurai.

- 1 CC TO Mr.M.P.SENTHIL , ADVOCATE IN SR No. 92537.
- + 1 CC TO Mr.V.BALAJI , ADVOCATE IN SR No.92347.
- CM
- DS SKN SAR3 30 10 2018 2P 7C

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