



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**C.R.P. (PD) (MD) No.1956 of 2017
and C.M.P. (MD) No.9954 of 2017**

1. Narayanasamy @ Raju
2. R.Mahadevan @ Ravi
3. Radhakrishnan ... Petitioners/Petitioners/Defendants
Rajappa (Died)

-vs-

1. Venkatraman
2.Chandrasekaran ... Respondents/Respondents/Plaintiffs

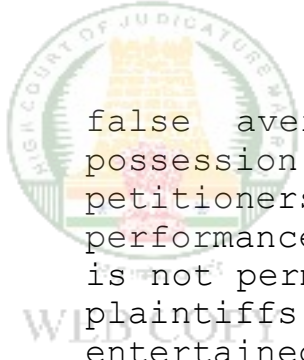
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 29.08.2017 made in I.A.No. 550 of 2017 in O.S.No.37 of 2010 on the file of Subordinate Judge, Srivilliputhur by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Niresh Kumar
For Respondents : Mr.V.Perumal

O R D E R

The revision petitioners are the defendants in O.S.No.37 of 2010 on the file of the Sub-Court, Srivilliputhur and in the suit, the plaintiffs / respondents herein sought for injunction, recovery of vacant possession of the property, etc. During pendency of the suit, the defendants had filed an application in I.A.No.160 of 2013, seeking injunction, restraining the plaintiffs and their men from disturbing peaceful celebration of the function in the property, which was ultimately dismissed as infructuous and subsequently, the defendants had filed yet another application in I.A.No. 550 of 2017, seeking to stall the proceedings in O.S.No.37 of 2010 till the order passed in the appeal filed against the order in I.A.No.160 of 2013, which came to be dismissed by the Trial Court. Challenging the said order, the defendants / petitioners herein are before this Court.

2. It is the case of the revision petitioners that their ancestors were using the suit schedule property as Sabha for conducting rituals and other caste members and outsiders were not allowed to enter the premises. As such, the plaintiffs, by making



false averments had filed the suit for recovery of vacant possession of the property. It is the further case of the petitioners that the plaintiffs, instead of seeking for specific performance of the property, merely sought for injunction, which is not permissible in law. Further, the suit had been filed by the plaintiffs based on unregistered documents, which cannot be entertained before the Civil Court.

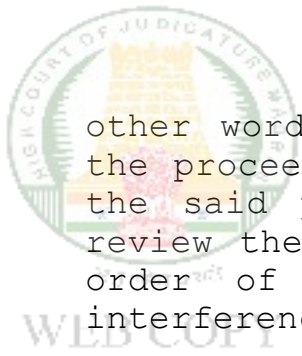
3. The revision petitioner states that since the petitioners moved the Appellate Court by way of filing Civil Miscellaneous Appeal, continuance of proceedings / trial in the suit will affect their case and much prejudice would be caused therefrom. Therefore, it is prayed that the trial of the suit may be stayed till the pronouncement of judgment in the pending appeal.

4. Learned counsel for the plaintiffs/respondents has contended that the defendants started using the suit schedule property for commercial purpose, which is against the clause prescribed in the laws of the Sabha. The 1st respondent had executed an undertaking deed dated 01.12.2003 assuring the plaintiffs and their family members that no building would be constructed in the property except the ground floor and since they acted contrary to the the said undertaking, having found no other efficacious remedy, the plaintiffs filed the suit. It is further contended that in absence of stay in the appeal, there is no need to stall the proceedings in the suit and the main intention of the defendants is to drag on the proceedings without allowing the suit to proceed further and therefore, the petition is liable to be dismissed.

5. Heard the learned counsel on either side and this Court also perused the material documents placed on record.

6. The revision petitioners have invoked the provisions of Order 41 Rule 5(2) CPC for staying the conduct of trial in the suit. It is seen that as against the order passed in I.A.No.160 of 2013, an appeal is stated to be pending before the District Court, Srivilliputhur. However, it is not clear whether the said appeal has been numbered or not, as no reference has been furnished to this Court to that effect. It is to be noted that the said application was of the year 2013 and got dismissed in the year 2014 as having been rendered as infructuous. It is not known whether the appeal was filed immediately thereafter or with huge delay, as the present application under challenge in this petition was filed only in the year 2017.

7. As rightly held by the Trial Court, this Court as well as the Hon'ble Supreme Court time and again insisted all Trial Courts to go to the service of the law and as such, in absence of any stay in the appeal, there is no justification on the part of the defendants in seeking to stall the proceedings in the suit. In



other words, when there is no stay granted by the Higher Forum, the proceedings before the Lower Courts should not be stopped and the said principle is applicable even for the cases filed for review the orders. Therefore, this Court is of the view that the order of the Trial Court is perfectly valid and needs no interference by this Court.

8. In the result,

a) this civil revision petition is dismissed, confirming the order dated 29.08.2017 made in I.A.No. 550 of 2017 in O.S.No.37 of 2010 by the learned Subordinate Judge, Srivilliputhur;

b) considering the fact that the suit is of the year 2010, the Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order by conducting the trial on day-to-day basis without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for early disposal of the suit within the time stipulated by this Court as above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

1. The Subordinate Judge,
Srivilliputhur.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.V.Perumal , Advocate in SR No. 69823

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AE/SV/SAR2/30.07.2018/3P/5C

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