

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1877 of 2013 and
M.P.No.1 of 2013

V. Bose

... Petitioner

v.

1. J.Selvarengaraju

2. S.Raghupathy

3. J.S.T. Kuzhali

4. M.C. Ganesan

5. S.Ravi

6. R. Najma

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 12.09.2012 made in C.M.A.No.53 of 2012 on the file of the XV Addl. Judge, City Civil Court, Chennai, confirming the order and decree dated 26.04.2012 made in I.A.No.4556 of 2012 in O.S.No.1696 of 2012 on the file of the II Asst. Judge, city Civil Court, Chennai.

For Petitioners : Mr. K. Lavan

For Respondents : R1 – Died
No Appearance – for R2, & R3
Mr.R.Kannan – for R5 & R6

ORDER

Challenging the Judgment and Decree passed in C.M.A.No.53 of 2012 on the file of the XV Additional Judge, City Civil Court, Chennai, confirming the fair and final order passed in I.A.No.4556 of 2012 in O.S.No.1696 of 2012 on the file of the II Assistant Judge, City Civil Court, Chennai, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S. No.1696 of 2012 for permanent injunction restraining the defendants 5 and 6 from proceeding with any type of construction in the suit property. The plaintiff also filed an application in I.A.No.4556 of 2012 seeking for temporary injunction restraining the defendants 5 and 6 from putting up any construction in the suit property.

3. From the above, it is clear that the prayer sought for in the

suit as well as in the Interlocutory Application are identical.

4. The application filed by the plaintiff was opposed by the defendants stating that the plaintiff has got no right to file such an application.

5. Admittedly, the petitioner-plaintiff is an agreement holder alleged to have been executed by the vendor of the respondents 5 and 6.

6. It is the case of the petitioner that the vendor of the respondents 5 and 6 executed the sale deed in favour of the respondents 5 and 6 on 29.10.2010 and also entered into an agreement of sale with the petitioner on 28.09.2006. The petitioner had also filed a suit in O.S.No.14644 of 2010 for specific performance, however, the defendants 5 and 6 are not parties to the said suit.

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7. It is also brought to the notice of this Court that the petitioner filed an application to implead the defendants 5 and 6 in O.S. No.1696 of 2012 as defendants in the suit in O.S.No.14644 of 2010.

8. Though the Trial Court allowed the application, on revision

filed by the defendants 5 and 6 in O.S.No.1696 of 2012, the order of the Trial Court was set aside. Hence, they were not made as defendants in the suit for specific performance.

9. The learned counsel appearing for the petitioner submitted that the suit for specific performance is also pending as of today.

10. The Trial Court, taking into consideration the case of both the parties, dismissed the application in I.A.No.4556 of 2012. On appeal preferred by the petitioner in C.M.A.No.53 of 2012, the Lower Appellate Court, confirmed the order of the Trial Court and dismissed the appeal. As against the concurrent findings of the courts below, the plaintiff has filed the above Civil Revision Petition.

11. As already stated, the prayer in the Interlocutory Application and in the suit are identical. Whether the defendants 5 and 6 have any right to put up any construction or not can be decided only after a full-fledged trial. That apart, if the present application in I.A.No.4556 of 2012 is allowed, will virtually amounts to decreeing the suit in O.S.No.1696 of 2012. That apart, whether, the petitioner has any right

to restrain the defendants from putting up any construction in the suit property can be decided only after adducing oral and documentary evidences. In the absence of the same, the issues involved in the present suit cannot be decided.

12. The learned counsel appearing for the respondents 5 and 6/defendants 5 and 5 submitted that the defendants 5 and 6 have already put up construction and completed the construction long back.

13. In these circumstances, I am of the considered view that the courts below have rightly dismissed the application. I do not find any error or irregularity in the order passed by the courts below. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Since the suit is pending from the year 2012, I direct the II Assistant Judge, City Civil Court, Chennai, to dispose of the suit in O.S.No.1696 of 2012 on merits and in accordance with law, without being influenced by any of the observations made in I.A.No.4556 of 2012 and also in C.M.A. No.53 2012, within a period of four months, from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

11.11.2019

Index : Yes / No

Speaking order / Non Speaking Order

Rj

To

1. The XV Additional Judge,
City Civil Court, Chennai,
2. The II Asst. Judge,
City Civil Court, Chennai.

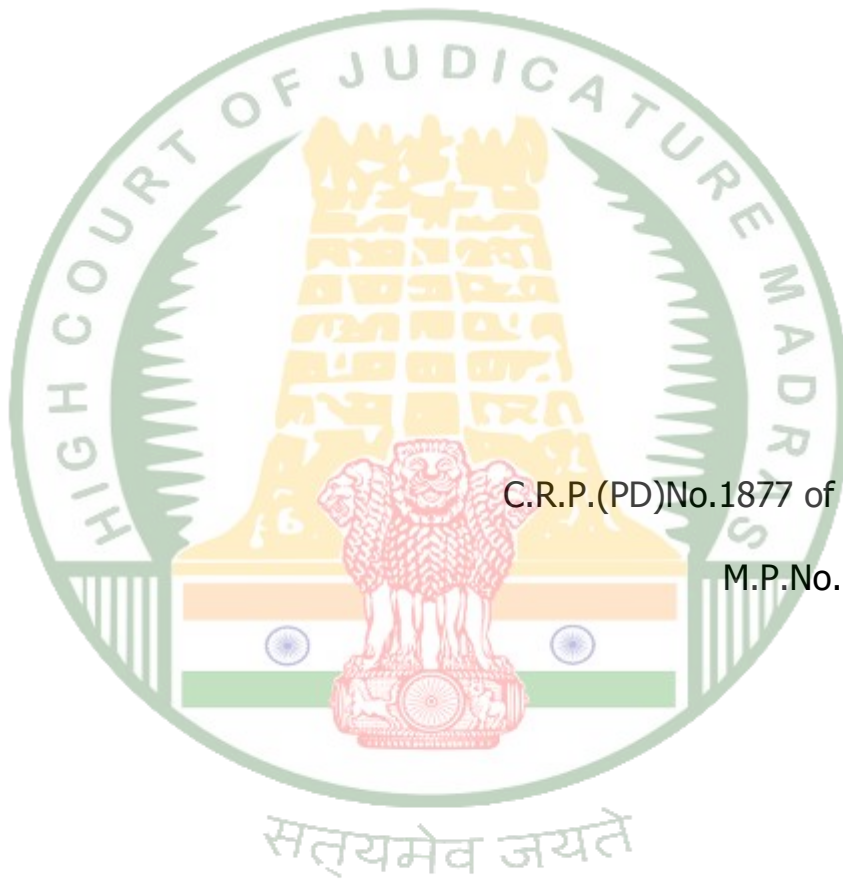


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M.DURAISWAMY, J.

Rj



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