

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.09.2019

Pronounced on : 16.09.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD)No.4802 of 2013
and M.P.No.1 of 2013

G.Chandrasekaran

..

Petitioner /
Defendant

versus

Yaseen Bee

..

Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.09.2013 made in I.A.No.6586 of 2012 in O.S.No.284 of 2012 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Gijesh Gopal
For Respondent : Mr.V.Achuthanandan
for M/s.Pass Associates

ORDER

This Civil Revision Petition has been preferred as against the order dated 24.09.2013 passed in I.A.No.6586 of 2012 in O.S.No.284 of 2012 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai.

2. Brief facts leading to the filing of this Petition;

2.1. The respondent/plaintiff has filed a suit in O.S.No.284 of 2012 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai, for the relief of permanent injunction, restraining the defendants and their servants, agents and all other person or persons claiming through or in trust of the defendants from in any manner putting up any superstructure abutting the south eastern boundary of the respondent/plaintiff in the suit schedule property. During the pendency of the said suit, the petitioner/defendant herein has filed an interim application in I.A.No.6586 of 2012 in O.S.No.284 of 2012 under Order 7 Rule 11 (a)(d) of the Code of Civil Procedure and prayed to reject the plaint filed by the respondent/plaintiff. The learned XIV Assistant Judge, City Civil Court, Chennai, in its order dated 24.09.2013 had dismissed the application filed by the petitioner stating that the respondent/plaintiff has narrated the cause of action, which is sufficient to proceed with the suit. Aggrieved over the same, the petitioner / defendant has filed the present Civil Revision Petition before this Court.

3. The learned counsel appearing for the petitioner would contend that in a suit filed by the respondent, the learned trial Judge had failed to consider that the petitioner is the owner of the suit property along with Plot No.5B, measuring an extent of 1200 sq.ft. comprised in R.S.No.3, Block No.3, T.S.No.12/2Part purchased from one Anandan, through a registered Sale Deed dated 09.07.2004. In fact, the respondent had trespassed into the petitioner's property and encroached 3 x 30 feet totally 90 sq.ft from north to south on the western side of the petitioner's property and built a compound wall. After forgetting the fact that the petitioner is the owner and without any valid right, the respondent has filed a suit and hence, the petitioner has filed I.A.No.6586 of 2012 to reject the plaint filed by the respondent. According to him, there was no cause of action for the suit filed by the respondent. The learned counsel would further contend that the learned trial Judge without considering the fact that the petitioner has already filed a suit in O.S.No.9444 of 2009 before the learned XIII Assistant Judge, City Civil Court, Chennai, for the relief of declaration and permanent injunction in respect to the encroached area, now attempted to proceed with the trial. More than that, the learned trial Judge had failed to see the report filed by the Advocate Commissioner.

4. On the other hand, the learned counsel appearing for the respondent would contend that before the trial Court, the respondent herein has filed a suit only for the relief of injunction. For availing the said relief, the respondent is having the duty to prove his possession. In the said circumstances, through the averments made in the plaint, the respondent has stated that the petitioner has started to put up the construction abutting the south eastern compound wall of the respondent during the month of December 2011 and thereby, the said circumstances create a cause of action for the suit. Therefore, the suit by the respondent is absolutely within the principles of four corners of law.

5. Now, upon considering the arguments advanced by the learned counsel on either side, it is true if the suit filed by the party does not disclose a cause of action, the plaint has to be necessarily rejected under Order 7 Rule 11 of the Code of Civil Procedure. In this case, admittedly, the petitioner and respondent are the neighbouring land owners. Further, it was admitted on either side that, already a suit has been filed by the petitioner in O.S.No.9444 of 2009 before the learned XIII Assistant Judge, City Civil Court, for the relief of declaration, declaring the suit property belonging to him and also for mandatory injunction, directing the respondent to remove the compound wall

and for permanent injunction in respect to the property now under dispute. In fact pendency of some other suit in respect to the same property cannot be a ground for rejecting the plaint filed by the respondent, since for the reason that the prayer sought for by the earlier suit is entirely different with the present suit.

6. Now, on going through the averments made in the plaint filed by the respondent, it has been clearly reveal the fact that the respondent is the absolute owner of the suit property. The only allegation levelled against the petitioner is that, he put up the construction abutting the south eastern compound wall of the respondent, so interfering with the possession of the respondent, the petitioner create a cause of action in the suit. All are well aware that the cause of action is a bundle of facts and every act of the parties would create a cause of action, definitely, the same could be decided only after conclusion of the trial.

7. Moreover in a suit pertains to this Civil Revision Petition, already an Advocate Commissioner was appointed to note down the physical features. In fact, after visiting the suit properties, the Commissioner has filed his report and the same was marked before the trial Court at the time of

considering the application filed by the petitioner as Ex.P.1. In the impugned order, it has been clearly stated that the report filed by the Advocate Commissioner shows that there is a deviation in the measurements of the plots owned by the petitioner and respondent. Therefore, at any event, it cannot be said that the suit filed by the respondent does not disclose a cause of action. In otherwise, the other three grounds contemplated under Order 7 Rule 11 of the Code of Civil Procedure could not be attracted in the present suit.

8. For the foregoing reasons, I am of the opinion that the impugned order dated 24.09.2013 made in I.A.No.6586 of 2012 in O.S.No.284 of 2012 passed by the learned XIV Assistant Judge, City Civil Court, Chennai, is not having any illegality. Hence, the Civil Revision Petition filed by the petitioner is liable to be dismissed and is accordingly dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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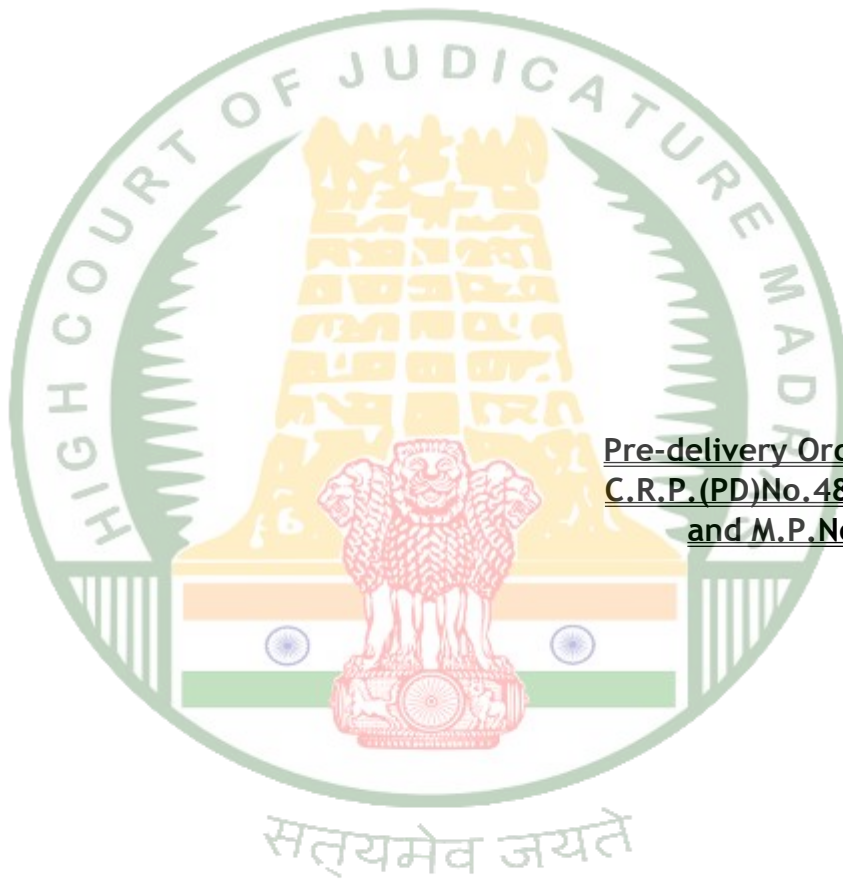
The XIV Assistant Judge,
City Civil Court, Chennai.



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R.PONGIAPPAN, J.,

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Pre-delivery Order made in
C.R.P.(PD)No.4802 of 2013
and M.P.No.1 of 2013

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