

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD) No.3268 of 2014 &
M.P.No.1 of 2014

- 1.Ponnusamy (Died)
- 2.Swaminathan
- 3.Anajalai
- 4.Samiappan
- 5.Jaya
- 6.Palaniappan
- 7.Selvi

... Petitioners

(petitioners 3 to 7 were brought on record as LR's of the deceased first petitioner viz., Ponnusamy vide Court Order dated 02.07.2019 made in C.M.P.No.12392 of 2019 in C.R.P.No.3268 of 2014)

Vs.

Natesan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders passed in I.A.No.161 of 2012 in O.S.No.57 of 2011 dated 04.06.2014 on the file of the Court of Principal District Munsif, Chidamabaram.

For Petitioners ... Mr.A.Muthukumar
For Respondent ... Mr.R.Bharathkumar

ORDER

The instant civil revision petition has been filed challenging the order dated 04.06.2014 passed by the learned Principal District Munsif, Chidambaram in I.A.No.161 of 2002 in O.S.No.57 of 2011.

Brief facts leading to the filing of the instant revision under Article 227 of the Constitution of India:

2. The petitioners 1 and 2 are the defendants in the suit O.S.No.57 of 2011 filed by the respondent. During the pendency of the suit, the first petitioner died. The suit was filed by the respondent against the petitioners 1 and 2 for grant of permanent injunction restraining the petitioners from interfering with the respondent's peaceful possession and enjoyment of the suit schedule property. On receipt of the suit summons, the petitioners 1 and 2 who are the defendants in the suit O.S.No.57 of 2011 filed I.A.No.161 of 2012 in

O.S.No.57 of 2011 under Order VII Rule 11 CPC to reject the plaint filed in O.S.No.57 of 2011 on the ground that the respondent has committed abuse of process of law by filing the suit O.S.No.57 of 2011.

3. According to the petitioners, the respondent has relitigated the issue, after the dispute was finally adjudicated in the earlier legal proceedings between the same parties. According to the petitioners, the subject matter of the suit schedule property was also involved in the suit O.S.No.248 of 1990 filed by the petitioners 1 and 2 against the respondent's father seeking for a permanent injunction restraining the respondent's father from interfering with the peaceful possession and enjoyment of the suit schedule property by the petitioners 1 and 2. During the pendency of the suit, an application for amendment under Order VI Rule 17 CPC was filed by the petitioners 1 and 2 to include the relief of possession and the same was also allowed by the Court. Thereafter, O.S.No.248 of 1990 was also decreed in favour of the petitioners against the respondent's father.

4. It is the case of the petitioners that the petitioners 1 and 2

have also filed an execution petition viz., E.P.No.64 of 2004 before the Principal District Munsif Court, Chidambaram and in the said execution petition, possession was also delivered to the petitioners 1 and 2. According to the petitioners, thereafter, the respondent's father filed O.S.No.5 of 2005 seeking to set aside the decree passed in favour of the petitioners 1 and 2 in OS.No.248 of 1990. According to the petitioners, the said suit was dismissed, as against which an appeal was filed by the respondent's father in A.S.No.117 of 2006 which was withdrawn by him. Therefore according to the petitioners, the judgment and decree passed in O.S.No.248 of 1990 in favour of the petitioners 1 and 2 has attained finality. Thereafter, the petitioners 1 and 2 once again filed another suit O.S.No.820 of 1995 against the respondent as well as his father seeking for an injunction restraining them from interfering with his peaceful possession and enjoyment of the suit schedule property, as it is the case of the petitioners that even after the judgment and decree passed in O.S.No.248 of 1990 which has attained finality, the respondent once again interfered with the peaceful possession and enjoyment of the suit schedule property by the petitioners 1 and 2. The said suit O.S.No.820 of 1995 was also decreed in favour of the petitioners 1 and 2. Thereafter,

the respondent, his brother and his father filed another suit O.S.No. 419 of 1996 seeking for permanent injunction in respect of the same property against the petitioners 1 and 2 which was dismissed for default. With these pleadings, the petitioners 1 and 2 had sought for rejection of plaint on the ground of abuse of process of law under Order VII Rule 11 CPC.

5. A counter affidavit was also filed by the respondent in I.A.No.161 of 2012 wherein they have denied the allegations contained in the affidavit filed in support of I.A.No.161 of 2012 and have stated that the subject matter of the dispute involved in the earlier suit is different from the subject matter of the dispute involved in the present suit O.S.No.57 of 2011. Further, the respondent has stated that he is not bound by the decree as he was not a party to the suit O.S.No.248 of 1990.

6. The Trial Court by its order dated 04.06.2014 dismissed I.A.No.161 of 2012 filed by the petitioners 1 and 2 under Order VII Rule 11 CPC on the ground that the identity of the suit schedule properties can be decided only after trial and the respondent is not bound by the

earlier judgment and decree passed in O.S.No.248 of 1990 as he was not a party to the said suit. Aggrieved by the dismissal of I.A.No.161 of 2012, the instant revision has been filed under Article 227 of the Constitution of India.

Submissions of the learned counsels:

7. Heard, Mr.A.Muthukumar, learned counsel for the petitioners and Mr.R.Bharathkumar, learned counsel for the respondent.

8. The learned counsel for the petitioners drew the attention of this Court to the various suits and the orders and Judgments passed therein including A.S.No.117 of 2006 filed against the Judgment and decree passed in O.S.No.5 of 2005. He drew the attention of this Court to the description of the schedule in all the suits namely O.S.No.248 of 1990, O.S.No.5 of 2005, O.S.No.820 of 1995, O.S.No.419 of 1996 as well as the present suit O.S.No.57 of 2011. Drawing attention to the suit schedule property, the learned counsel for the petitioners would submit that the schedule mentioned in the suit O.S.No.57 of 2011 as well as the schedule mentioned in the previous suits are identical as the boundaries

are one and the same and therefore, the present suit filed by the respondent in O.S.No.57 of 2011 is a abuse of process of law as the respondent has relitigated the matter, when the issue has already attained finality, by virtue of Judgment and decree passed in O.S.No.248 of 1990 instituted by the petitioners 1 and 2. According to him, pursuant to the said judgment and decree, the petitioners have taken possession of the suit schedule property as evidenced by the order passed in the execution petition.

Discussion:

9. This Court has also perused the description of the schedule mentioned in O.S.No.248 of 1990 as well as the schedule mentioned in the instant suit O.S.No.57 of 2011. Even though the boundaries seems to be similar, but the extent of the property is different. In the schedule mentioned in O.S.No.248 of 1990, the extent of the property is 0.05 cents whereas in the schedule mentioned in the present suit O.S.No.57 of 2011 is 0.06¼ cents. Further, as seen from the plaint, several documents have been filed along with the plaint upto the year 2010.

10. The respondent has filed a registered settlement deed executed in his favour by his father on 07.02.1996, house tax receipts upto the year 2010, Electricity bills dated 16.08.2003 & 11.02.2011, apart from filing of other documents including cash receipts issued by the Chidambaram Taluk Co-operative House Building Society Limited. According to him, as seen from the plaint averments, the respondent got the loan from Chidambaram Taluk Co-operative House Building Society Ltd., for completing construction of the house and he has been repaying to the Chidambaram Taluk Co-operative House Building Society Limited. Further it has been stated in the plaint that the Government of Tamil Nadu has also remitted the loan borrowed from the Chidambaram Taluk Co-operative House Building Society. He has also averred in the plaint that he is in exclusive possession and enjoyment of the suit schedule property as the absolute owner since 1996.

WEB COPY

11. It is settled law that while deciding an application under Order VII Rule 11 CPC, the Court will have to look only into the plaint averments. In the instant case, extent of the suit schedule mentioned in

O.S.No.248 of 1990 as well as the suit schedule mentioned in the present O.S.No.57 of 2011 are different. In O.S.No.248 of 1990, the extent is mentioned as 0.05 cents whereas the extent mentioned in O.S.No.57 of 2011 as 0.06 ¼ cents. The respondent has also filed the documents upto the year 2010 which includes the house tax receipts. Further, it is the respondent's case, as seen from the plaint averments that he had mortgaged the suit schedule property and had availed loan from Chidambaram Taluk Co-operative House Building Society Limited. As there are differences in the extent between the suit schedule mentioned in O.S.No.248 of 1990 and the present suit O.S.No.57 of 2011 and the documents upto the year 2010 having been filed along with the plaint by the respondent, the genuineness of those documents can be examined. This Court has also perused the impugned order and does not find any infirmity in the same as the trial court has rightly rejected the application filed under Order VII Rule 11 CPC as the issue raised by the petitioners is a matter for trial.

12. It is brought to the notice of this Court that the written statement has already been filed by the petitioners in the suit. Since the

written statement has already been filed and due to the long pendency of the suit, a direction will have to be given to the Trial Court to dispose of the suit, within a time frame.

Conclusion:

13. In the result, the civil revision petition is dismissed and the Trial Court is directed to dispose of the suit, within a period of three months from the date of framing of the issues. However, it is made clear that the Trial Court shall dispose of the suit uninfluenced by any observation made by this Court in this Order. No costs. Consequently, connected miscellaneous petition is closed.

19.07.2019

nl

Index : Yes / No

Internet: Yes/No

Speaking/Non-Speaking orders

सत्यमेव जयते
WEB COPY

To

The Principal District Munsif, Chidamabaram

ABDUL QUDDHOSE. J.,

nl



CRP (PD) No.3268 of 2014

WEB COPY

19.07.2019