

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.4339 of 2018

and

C.M.P.No.23722 of 2018

A.Amirtharaj

... Petitioner/ Petitioner/Defendant

-VS-

1.L.Ranjithkumar

2.L.Muthukumar

... Respondents 1 & 2/Respondents/
Plaintiffs

3.P.Kannan

4.P.Rajkumar

5.P.Vijaykumar

... Respondents 3 to 5/Third parties/
proposed Defendants 3 to 5

PRAYER: Civil Revision Petition filed under Article 227 of the constitution of India, against the fair and decreetal order dated 19.09.2018 made in I.A.No.15873 of 2017 in O.S.No.1253 of 2012 on the file of the VIII Asst City Civil Judge, Chennai, (FAC) V Assistant Court.

For Petitioners : Mr.P.Gunaraj

For Respondents : Mr.T.A.Shagul Hameed
Caveet Counsel for R1 and R2

ORDER

The above Civil Revision Petition is filed challenging the order dated 19.09.2018 in I.A.No.15873 of 2017 in O.S.No.1253 of 2012 passed by the learned VII Asst City Civil Court, Chennai.

2.I.A.No.15873 of 2017 in O.S.No.1253 of 2012 has been filed for impleading respondents 3 to 6 as defendants 3 to 6 in the said suit. The suit in O.S.No. 1253 of 2012 has been filed by respondents 1 and 2 herein for the following reliefs:-

"a) for permanent injunction restraining the defendant not to interfere and cause hindrance regarding the peaceful holding and possession of the plaintiffs property bearing No.1, Pillaiyar Koil Street. Kodambakkam Road, Chennai-600 033 along with the right of proceedings with the lawful act of construction as absolute owners in the eye of law pursuant to the rights duly declared in O.P.No.281/2004 before the Hon'ble High Court, Madras by order dated 19.04.2010 unless and until the legal rights of the defendant are duly established to claim right against the plaintiffs under due process of law with due determination of the legal rights of the defendant against the right of the plaintiffs in the manner known to law;"

3.The case of the petitioner is that the suit schedule property is a vacant site measuring an extent of 735 sq.ft bearing Door No.1, Pillaiyar Koil Street, Nallankuppam, Kodambakkam Village, kodambakkam District described within specified boundaries. The plaintiffs were asserting right to the suit property, on the basis of Will of their grandfather, Mr.R.Govinda Naicker, in respect of which probate proceedings were taken out in O.P.No.281 of 2004 and probate has also granted. It is the case of the respondents 1 and 2 that they are in possession and enjoyment of the suit property and the defendant/petitioner herein is trying to enter into the possession of the suit property and causing interference to the plaintiff's peaceful possession and enjoyment of the suit property. The plaintiff's would also contend that the revision petitioner is a very powerful man, having money as well as the power and therefore, they have to be protected by an order of injunction.

4.The revision petitioner had entered appearance in the above suit and had filed a written statement on 31.12.2010. Despite denying the right of the plaintiff's/respondents 1 and 2 to the suit property, he would also contend that respondents 1 and 2 filed an earlier suit in O.S.No.4381 of 1998 on the file of the learned VI Asst. City Civil Judge, Chennai against

this revision petitioner and that the suit has been dismissed as against which no appeal was preferred by the plaintiff's/respondents 1 and 2 herein and therefore, this suit was hit by the doctrine of res judicata since the judgment has become final.

5. In the counter filed by respondents 1 and 2 in I.A.No.15873 of 2017 they have contended that after the filing of the written statement, the defendant had filed an application in I.A.No.17424 of 2014 for rejecting the plaint under the provision of order VII Rule 1 Code of Civil Procedure. This application was dismissed on 30.08.2016 and without preferring a civil revision petition, the revision petitioner/defendant had represented that he had filed a revision and had been taking time. After prolonging the case of 2 years, he had filed proof affidavit on 22.12.2016 and again took time and marked the documents only six months later, i.e, on 20.06.2017. On 30.06.2017, when the matter was posted for cross examination, the impugned petition came to be filed.

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6. The petition which is impugned in the present civil revision petition has been filed to implead respondents 3 to 6 in the above suit as defendants 3 to 6. This application has been moved on 21.11.2017 five years after the written statement filed by the revision petitioner. In the said

petition, the respondents would state that the father of the proposed parties is the owner of the suit property, as he is the son of the Original owner Govindamal and they would also contend that in Rent Control proceedings, Govindamal had got an eviction order against the respondents 1 and 2 and possession had also been taken by her in execution proceedings. Therefore it is their case that they are necessary party to proceedings. It is pertinent to note that the application was not moved by the proposed respondents but it is moved by the revision petitioner who is in no way related to the proposed parties. A detailed counter affidavit has been filed and the learned V Asst. City Civil Judge, Chennai by his order dated on 17.09.2018 was pleased to dismiss the said application with costs.

7.Challenging the said order, the revision petitioner is before this Court. Without traversing into the merits of the petition, it would suffice to state that the petition has not been moved by the proposed parties and that apart that, the proposed parties have not chosen to enter appearance which shows that they are not interested in the suit. Though as stated by the learned counsel for the revision petitioner in the earlier suit their rights had been upheld by the Court below, the revision petitioner has filed the written statement in the year 2012 where he has not made any statement that the property belonged to the said Palani, whose legal heirs they seek to implead as defendants in the suit. The petition is highly belated and

therefore the order of the learned V Asst. City Civil Court, Chennai suffers from no infirmity. The Civil Revision Petition is therefore dismissed.

8.The learned counsel for the caveators submitted that in an earlier Revision Petition C.R.P.No.900 of 2018, this Court by order dated 07.03.2018 had directed the Trial Court to dispose of the suit as expeditiously as possible. Considering the fact that the matter is listed for the cross examination of PW1, the learned V Additional City Civil Judge, Chennai is directed to dispose of the suit not later than by 30.06.2018. The Civil Revision Petition is dismissed.

04.02.2019

Index : Yes/No
Internet : Yes / No
Speaking/non-speaking order

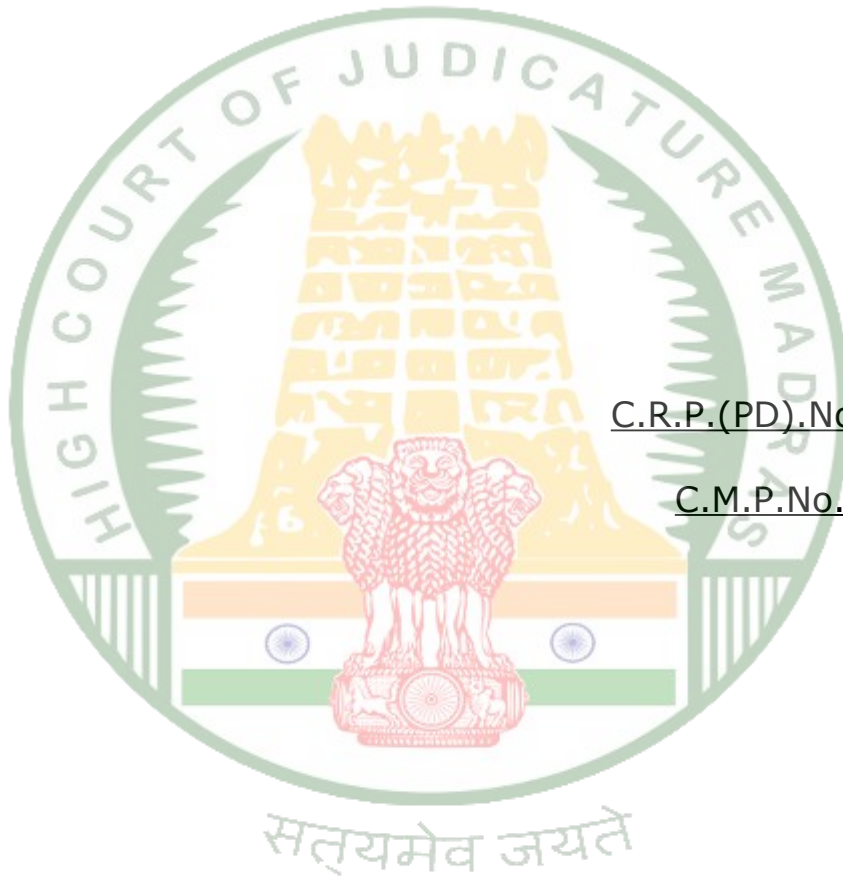
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P.T.ASHA, J.

jas/jrs



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