



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2019

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THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) (MD) No.2352 of 2013

and

M.P(MD)No.1 of 2013

1.Dr.K.Kamalesh Babu
2.K.Vijayakumar

... Petitioners/Petitioners

-Vs-

1.M.Sajini
2.M.Nelson Babu

... Respondents/Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Decreetal Order dated 12.07.2013 passed in C.M.A.No.1 of 2011 on the file of Principal Subordinate Judge, Nagercoil, confirming the Fair and Decretal order dated 15.04.2010 passed in I.A.No.168 of 2008 in O.S.No.99 of 2008, on the file of the Principal District Munsif, Nagercoil.

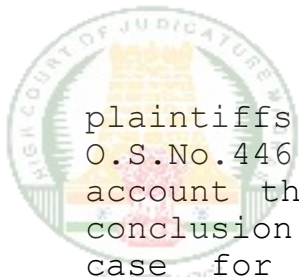
For Petitioners : Mr.B.Vinoth
for Mr.R.Subramanian
For Respondents : Mr.A.Arumugam

O R D E R

This Civil Revision Petition has been filed challenging the dismissal of application for injunction filed by the plaintiff seeking temporary injunction restraining the defendants from interfering with their possession, from encroaching and trespassing or making any construction in the suit schedule property, pending disposal of the suit.

2. The suit in O.S.No.99 of 2008 was filed by the plaintiffs for declaration of their title and for consequential permanent injunction. The suit property was described as 'A,B and C Schedules.. A Schedule contains three items, B schedule consists of one item and C schedule is shown as Pathway.

3. The said application was resisted by the defendants contending that the plaintiffs were never in possession of the property and they have been in possession of the properties. The



plaintiffs have filed the another suit seeking the same relief in O.S.No.446 of 2007 and the same is also pending. Taking into account the pleas and counter pleas, the trial Court came to the conclusion that the plaintiffs have not established the prima facie case for grant of injunction. On the said conclusion, the application was dismissed by the trial Court. Aggrieved, the plaintiff has preferred an appeal in C.M.A.No.1 of 2011, which was also dismissed by the Principal Sub-Court, Nagercoil concurring with the findings of the trial Court. Aggrieved, the plaintiffs have come up this by way of Civil Revision Petition.

4. I have heard Mr.B.Vinoath, learned counsel for Mr.R.Subramnian, learned counsel for the petitioner and Mr.A.Arumugam, learned counsel for the respondents.

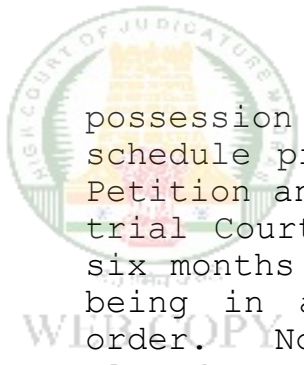
5. Mr.B.Vinoth, learned counsel appearing for the petitioner would submit that the petitioners have had the benefit of injunction throughout the pendency of the Civil Revision Petition and therefore, the interim order could be continued till the disposal of the suit.

6. Mr.A.Arumugam, learned counsel appearing for the respondent would submit that the action of the plaintiffs in filing suits after suits, would amount to forum shopping. The plaintiffs filed two suits in O.S.No.446 of 2007 and O.S.No.99 of 2008 seeking declaration and recovery of possession, which relate to certain portions of the suit property. He would also point out that the plaintiffs earlier filed O.S.No.446 of 2007 for the same relief of declaration and injunction. He would also draw my attention to the fact that the suit properties in O.S.No.99 of 2008 and O.S.No.446 of 2007 are substantially the same and therefore, according to Mr.A.Arumugam, the plaintiffs have not come to Court with clean hands and therefore are not entitled to discretionary relief of injunction.

7. I have considered the rival submissions.

8. As already stated, both the Courts below have found that the plaintiffs have not made out a prima facie case or balance of convenience in their favour for grant of injunction. The present suit in O.S.No.99 of 2008 is the second suit filed by the plaintiffs seeking same relief. Their suit in O.S.No.446 of 2007 was already pending on the date of filing of this suit and the same is pending as on today also.

9. From the plaint produced by the learned counsel for the respondents in O.S.No.128 of 2012, it could be seen that the plaintiffs have sought for recovery of possession of certain portion of the property, which is the subject-matter of the suit in O.S.No.99 of 2008. Therefore, plaintiffs cannot seek temporary injunction restraining the defendants from interfering with their



possession and putting up construction and trespassing into the suit schedule property. I therefore, see no merit in the Civil Revision Petition and the Civil Revision Petition is dismissed. However, the trial Court is directed to dispose of the suit, within a period of six months from the date of receipt of a copy of this order without being in any manner influenced by the observation made in this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Principal Subordinate Judge,
Nagercoil.
2. The Principal District Munsif,
Nagercoil.
3. The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.R.SUBRAMANIAN, Advocate (SR-105683[F] dated 18/12/2019)
+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-105648[F] dated 18/12/2019)

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