

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(PD).No.761 of 2020
and
C.M.P.No.4052 of 2020

1. Kumari
2. M. Victor
3. M. Gopalakannan
4. M. Venkatesan
5. M. Yesuaddiyal
- M. Seeman (died)
6. M. Yesubadam

... Petitioners

K. Shankar

... Respondent

Vs.

PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code to set-aside the fair and decreetal order dated 24.07.2017 passed in I.A.No.42 of 2019 in O.S.No.84 of 2016 on the file of the Additional Sub-ordinate Court, Chengalpattu and allow the Revision Petition.

For Petitioner : Mr. G. Narayanan

ORDER

The Civil Revision Petition has been filed against the order dismissing the petitioners' application filed under Order 7 Rule 11 CPC to reject the plaint.

2. The respondent/plaintiff has filed a suit in O.S.No.84 of 2016 on the file of the Additional Subordinate Court, Chengalpattu, for permanent injunction restraining the defendants from interfering with the suit schedule property. Pending suit, the petitioners/defendants have filed an application to reject the plaint under Order 7 Rule 11 CPC on the ground that no cause of action arises for filing the suit and the respondent/plaintiff without establishing his title is seeking for injunction. The trial Court, dismissed the application, by an order dated 24.07.2019 holding that cause of action is a mixed question of law and fact, whether the respondent/plaintiff has

title over the property, can only be decided at the time of trial and on that ground, the plaint cannot be rejected. Now, challenging the same, the present revision has been filed.

3. Heard the learned counsel for the petitioner and perused the materials available on records carefully.

4. The suit is filed for permanent injunction on the ground that the respondent/plaintiff is in possession and enjoyment of the suit property. The cause of action for filing the suit arose on 25.06.2016, when the defendants were interfering with the peaceful possession of the respondent/plaintiff, and he has also given a police complaint. It is settled law that in the application filed under Order 7 Rule 11 CPC, the Court has to see whether any cause of action arises for filing the suit or the suit is barred by Limitation and the averments made in the plaint are germane to decide the issue. A meaningful reading of the plaint, it could be seen that the respondent/plaintiff is claiming right over the

property and also alleging that the petitioners/defendants are interfering with the suit schedule property and hence, cause of action has been made out for filing the suit. Whether the respondent/plaintiff has any title over the property or not can be decided only at the time of trial. The trial Court after considering all the facts rightly dismissed the application and hence, I find no illegality or irregularity in the order passed by the trial Court and I find no merit in the revision.

5. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2020

Index:Yes/No

Internet:Yes

Speaking/Non-speaking order

mrp

To

The Subordinate Court, Chengalpattu.

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V.BHARATHIDASAN, J

mrp



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