

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD)No.967 of 2020
and C.M.P.No.5271 of 2020

Rajasekaran ... Petitioner/2nd Defendant

versus

1.Pazhani ... 1st Respondent/Plaintiff

2.K.Ravi ... 2nd Respondent/1st Defendant

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.649 of 2017 in O.S.No.132 of 2011, dated 02.11.2019 on the file of Additional District Munsif, Alandur.

For Petitioner : Mr.T.Easwradhas

ORDER

This Civil Revision Petition has been filed by the petitioner against the fair and decretal order passed in I.A.No.649 of 2017 in O.S.No.132 of 2011, dated 02.11.2019 on the file of Additional District Munsif, Alandur.

2. The first respondent/plaintiff has filed a suit in O.S.No.132 of 2011 for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule A & B properties. The petitioner / second defendant has filed a written statement in the aforesaid suit and also filed an interlocutory application in I.A.No.649 of 2017 under Order 14 Rule 2(2) of CPC to decide the maintainability of the suit under Section 41(h) of the Specific Relief Act as preliminary issue. Since the plaintiff's title is disputed, the above suit for injunction is not maintainable as alternative efficacious remedy of declaration of title is available under the said Act. The trial Court by observing that the relief sought for in the main suit and interim application are one and the same, had dismissed the said I.A.No.649 of 2017 filed by the revision petitioner. Challenging the aforesaid order of the trial Court, the present CRP has been filed.

3. The learned counsel for the revision petitioner submitted that the trial Court, without considering the fact that the petitioner / 2nd defendant claimed absolute title over the suit schedule properties as if he purchased

the suit schedule properties and its greater extent by a registered sale deed dated 15.11.2002 from Mrs.Raghini, had dismissed the said application by presuming that the said application was filed for interim injunction. The learned counsel for the petitioner further submitted that the trial Court failed to see the statement made in the written statement, wherein the petitioner has clearly stated that since the plaintiff's title is disputed, the above suit for injunction is not maintainable since alternative efficacious remedy of declaration of title is available under Section 41(h) of the Specific Relief Act.

4.The first respondent / plaintiff has filed the counter-affidavit in the said application in I.No.649 of 2017 stating that the argument of the petitioner that he had purchased 9 cents of land from vendor is not supported by any documentary evidence and the petitioner himself has orally stated that he purchased 2 cents from vendor and none of the revenue documents stands in the name of the plaintiff for 9 cents, but only for 7 cents. Therefore, it is the contention of the first respondent / plaintiff that the petitioner neither has title over the said 2 cents nor he has revenue records to substantiate his claim.

5.It is further stated that the petitioner has filed a suit in O.S.No.98 of 2011 by wrongly mentioning his property as 9 cents and obtained injunction and the said suit was not filed for declaration. The petitioner has also filed another suit in O.S.No.99 of 2012 before Sub Court, Tambaram and in which the first respondent filed an application for rejection of plaint based on the same plea that the petitioner did not file the suit for declaration initially. Therefore, it is clear that to maintain the order of injunction and to protract the proceedings, he filed various vexatious applications.

6.On perusal of records, the first respondent has filed a suit in O.S.No.132 of 2011 for permanent injunction and the aforesaid suit is pending. The petitioner / second defendant has filed the present application in the year 2017 under Order 14 Rule 2(2) of CPC to decide the maintainability of the suit under Section 41(h) of the Specific Relief Act as preliminary issue. Admittedly, the petitioner herein has filed two suits in O.S.No.98 of 2011 for injunction and O.S.No.99 of 2012 before Sub Court, Tambaram and in which, the first respondent / plaintiff filed an application for rejection of plaint based on the same plea that the petitioner did not file the suit for declaration initially and obtained an order of injunction in his

favour in O.S.No.98 of 2011. When there is a specific statement made by the first respondent/plaintiff in his counter that the petitioner neither has title over the said 2 cents nor he has revenue records to substantiate his claim, the same shall be decided at the time of trial in the suit and this Court cannot interfere with the suit proceedings.

7. Therefore, considering the submissions made by the parties concerned and also considering the fact that the suit is pending for trial, this Court is of the view that since the petitioner has filed the said application for maintainability of suits, he shall approach the trial Court and file additional issues with the leave of the Court.

8. This Court finds no merits in the CRP and accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

msm/ak

06.03.2020

D.KRISHNAKUMAR, J.

msm

To
The Additional District Munsif,
Alandur.



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