

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 04.11.2020]

[ORDERS PRONOUNCED ON : 02.12.2020]

CORAM:

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

C.R.P.[PD] No.1933 of 2020

and

C.M.P.No.11844 of 2020

1. Tanceer Ahamed
2. Fathima Ambreen

... Petitioners/Plaintiffs

.. Vs ..

1. Raja
2. Durai

... Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.08.2020 passed in I.A.No.2 of 2020 in O.S.No.46 of 2020 by the learned Additional District Judge, Dharmapuri.

For Petitioners : Mr.P.Valliappan
for M/s.PV.Law Associates
For Respondents : Mr.C.Uma Shankar

ORDER

By consent of both sides, the main Civil Revision Petition itself is taken up for final disposal.

2. The plaintiffs in the suit in O.S.No.46 of 2020 are the revision petitioners herein. The respondents herein have filed a suit in O.S.No.65 of 2020 before the District Munsif Court, Palacode. Thereafter, the revision petitioners herein have filed the suit in O.S.No.46 of 2020 before the Principal District Court, Dharmapuri, seeking for the relief of declaration of title and for permanent injunction. Pending suit, the revision petitioners/plaintiffs have filed an Interlocutory Application in I.A.No.2 of 2020 seeking for temporary injunction against the respondents/defendants.

3. In the said I.A.No.2 of 2020, counter affidavit has been filed. After enquiry, the learned Additional District Judge, Dharmapuri, has held that *prima facie* case is made out in favour of the revision petitioners/plaintiffs and balance of convenience is also in favour of the

revision petitioners/plaintiffs. However, the learned Additional District Judge, Dharmapuri, ordered that I.A.No.2 of 2020 to be taken along with the main original suit. Challenging the said order passed in I.A.No.2 of 2020, dated 13.08.2020, the plaintiffs in the suit in O.S.No.46 of 2020 have preferred the present Civil Revision Petition before this Court.

4. Heard Mr.P.Valliappan, learned counsel for the revision petitioners and Mr.C.Uma Shankar, learned counsel for the respondents.

5. It is seen from the records that earlier, the respondents herein have filed caveat before the Additional District Court, Dharmapuri, and without noticing the caveat filed, the revision petitioners/plaintiffs have filed the above suit in O.S.No.46 of 2020 and obtained ad-interim injunction. When it was brought to the knowledge of the learned Judge, for non-servicing of the notice, ad-interim injunction granted was vacated on 20.07.2020. Again, that said I.A. was taken up for hearing. Counter was filed by the respondents herein/defendants. After conclusion of the argument, orders were pronounced on 13.08.2020.

6. On a perusal of the order, it is seen that the learned Additional District Judge, Dharmapuri, appears to have held that there is a *prima facie* case made out in favour of the revision petitioners herein/plaintiffs and further, the balance of convenience is also in favour of the revision petitioners herein/plaintiffs and on the point of adverse possession, certain observations are also made in respect of the defence taken by the respondents herein/defendants. However, in the operative portion of the order, the learned Additional District Judge, Dharmapuri, has held that the dispute with regard to the fact in issue can be decided only after conclusion of the trial proceedings. Accordingly, it was ordered that I.A.No.2 of 2020 filed for temporary injunction to be tried along with the main Original Suit.

7. On a perusal of the Trial Court proceedings, I find that on behalf of the revision petitioners herein/plaintiffs, documents Exs.P.1 to P.24 were marked. On behalf of the respondents herein/defendants, documents Exs.R.1 to R.11 were marked. No oral evidence has been adduced on behalf of both the plaintiffs and the defendants.

8. Based upon the documentary evidence, the learned Additional District Judge Dharmapuri, has come to the conclusion as stated supra. However, chosen to post the said I.A.No.2 of 2020 to be tried along with the main original suit. Considering the fact that the finding has been rendered in favour of the revision petitioners/plaintiffs, however, for the unknown reason, the learned Additional District Judge Dharmapuri, has chosen to post the I.A.No.2 of 2020 to be tried along with the main original suit which is totally contrary to the established principles under the Civil Procedure Code.

9. Taking into consideration the fact that a judicial order has been passed, I find that the order passed by the learned Additional District Judge, Dharmapuri, cannot stand in the scrutiny of law and hence, the order passed by the learned Additional District Judge, Dharmapuri, in I.A.No.2 of 2020, dated 13.08.2020 is set aside. However, I proposed to remand the matter to the trial Court to pass an order based upon merits. After going through the order passed by the learned trial Judge, I find that it may not be fair by the very same Judge

to deal with the very same I.A.No.2 of 2020 which was set aside by this Court.

10. Accordingly, in exercise of powers conferred upon this Court, O.S.No.46 of 2020 is hereby ordered to be transferred from the file of the Additional District Judge, Dharmapuri to the file of Principal District Judge, Dharmapuri. Since already documents have been marked, the learned Principal District Judge, Dharmapuri, shall hear the arguments and pass a fresh order in the above said I.A.No.2 of 2020, within a period of three weeks from the date of receipt of a copy of this order. Both the parties are hereby directed to maintain status quo till such time.

11. With these observations, this Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed.

02.12.2020

Internet : Yes
Index : Yes
Jrl

To

1. The Principal District Judge,
Dharmapuri.
2. The Additional District Judge,
Dharmapuri.



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RMT.TEEKAA RAMAN, J.

Jrl



**Order made in
C.R.P. [PD] No.1933 of 2020**

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