

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07.12.2020

Pronounced on :15.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No. 2091 of 2020

and

CMP.No. 13213 of 2020

1. P. Amala
2. Janet

... Petitioners

Versus

1. Meena
2. S.Selvaraj
3. S.Senthil Kumar

... Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.02.2020 passed in I.A.No. 1 of 2019 in O.S.No. 4290 of 2015, seeking rejection of plaint on the file of the I Assistant City Civil Court, Chennai.

For petitioners : Mr. K.Venkatesan

ORDER

The revision petitioners are the defendants in the suit.

2. The respondents/plaintiffs have filed a suit in O.S. No.4290 of 2014 before the I Assistant City Civil Court, Chennai, for the following reliefs:-

(i) mandatory injunction directing the defendants to deliver the encroached portion measuring an extent of 115 square feet in the A-Schedule property bearing Plot No.2, Door No.1/40/6, Jagannathapuram 1st Street, Chetpet, Chennai-600 031 to them;

(ii) directing the defendants to permanently close the entrance opened by the defendants at the South-Eastern side of the B-Schedule property bearing Plot No.1, Door No.40/6, Jagannathanpuram 1st Street, Chetpet, Chennai-600 031;

(iii) directing the defendants to remove the loft illegally put up by them at the eastern side of the B-Schedule property facing the 3 feet passage extending to an extent of 18 inches over the 3 feet passage;

(iv) directing the defendants to remove the Boulder put by the defendants at the 4 feet passage running from East to West

(v) for permanent injunction restraining the defendants, their servants, agents and his men from interfering with the peaceful possession and enjoyment of the 3 feet passage by the plaintiffs which exclusive belongs to them which is existing in front of the A-Schedule property bearing Plot No.2, Door No.1/40/6, Jagannathapuram 1st Street, Chetpet, Chennai-600 031, running from North to South.

3. During the pendency of the suit, the petitioners/defendants filed an I.A. No.1 of 2019 under Order VII Rule XI of CPC., to reject the plaint filed by the respondents/plaintiffs in O.S.No.4290 of 2015, on the ground that the respondents/plaintiffs are seeking the relief to an extent, which is more than the entitlement under the suit property. For non-joinder of necessary parties, the said application was dismissed and hence, the present revision has been filed before this Court.

4. The contention of the plaintiff is that the 3 feet which exists in front of 'A' schedule property is an exclusive passage and the defendant had put up sunshade and entrance in the said passage. Whereas the contention of the defendant is that the plaintiffs have no right over the said passage. It is the further contention of the plaintiff that in respect of the trespass made by the defendants, they have issued notice dated 25.06.2015.

5. As per the petition for the rejection of plaint, the contention of the defendant is that the loft and the entrance gate were put up 36 years back. Hence, the suit is barred by limitation.

6. Though the petitioner/defendant contends that the suit is barred by limitation, admittedly, the issue of limitation that was raised by the revision petitioners herein (Defendants

in the suit) on the factual matrix of the case appears to be mixed question of law and facts. In order to hold that the suit is barred by limitation, it has to be decided, when the said loft and entrance was put up and when it came to the knowledge of the plaintiff. The above are questions of fact, which can be decided only after recording evidence.

7. The next point urged by the petitioners/defendants is that there is no cause of action, as per the plaint averments, and facts have to be narrated to disclose a cause of action. Further more, the plaint averments and the plaint documents filed before the Trial Court would establish that the dispute with regard to the measurement of land is in respect of the schedule property between the parties, while the plaintiffs allege that the defendants had encroached the "C" schedule property and seeking the relief of mandatory injunction for eviction.

8. On the contrary, the case of the defendants is that the suit schedule properties are absolute properties of the defendants and hence, it is a matter for trial. According to the revision petitioners/defendants, the respondents/plaintiffs owned lands less than what is claimed in the schedule properties and further boundaries are wrongly described in the suit. As the same are the matter for trial, it cannot be gone into mechanically in this Civil Revision Petition.

9. On a perusal of the plaint averments and the plaint documents and rival contentions raised by the defendants, I am of the considered view that the dispute between the parties can be decided only after recording the evidence in the trial. Though the point of limitation has been raised, on the factual background, it is a mixed question of law and facts and it cannot be gone into in an application for rejection of the plaint under Order VII Rule XI of CPC., with regard to the cause of action. With regard to plaint averments and the plaint documents as well as the cause of action, the same have to be raised by the petitioners/defendants as stated supra, cannot be gone into in the application for rejection of the plaint.

10. In view of the scope of enquiry that can be considered in this application, the order passed by the trial court does not suffer from any procedural irregularity or illegality in determining the points.

11. In this view of the above, the Civil Revision Petition is devoid of merits and accordingly, the same is dismissed. No

costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

msm

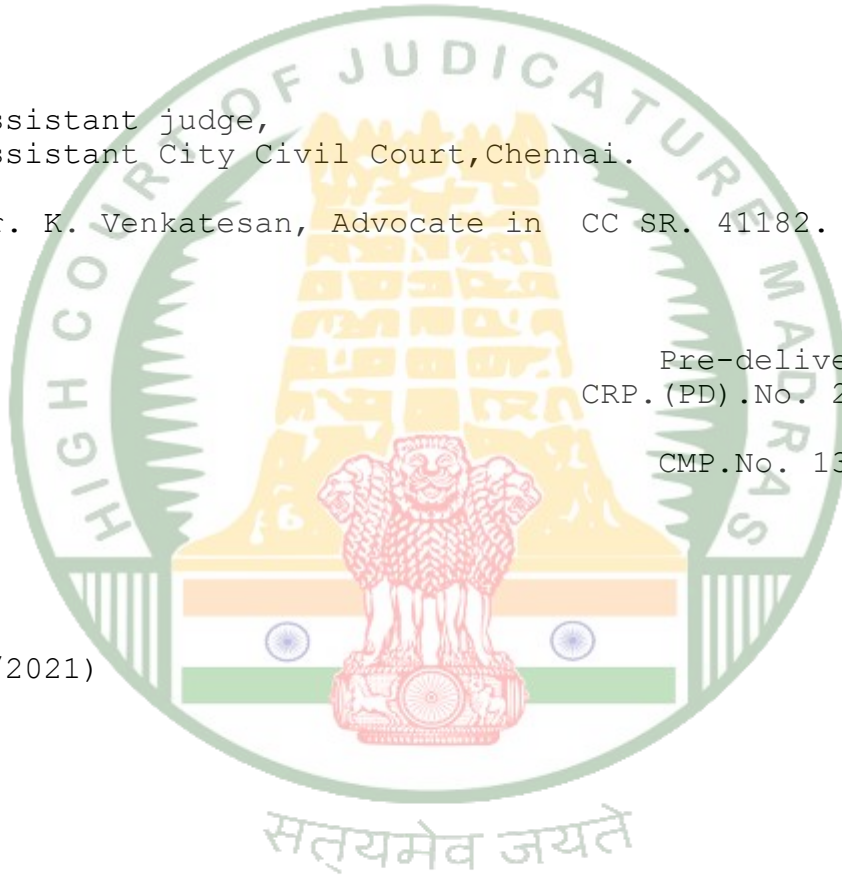
To

1.The I Assistant judge,
The I Assistant City Civil Court,Chennai.

+1CC to Mr. K. Venkatesan, Advocate in CC SR. 41182.

Pre-delivery order in
CRP.(PD).No. 2091 of 2020
and
CMP.No. 13213 of 2020

BR (CO)
NRA (05/02/2021)



WEB COPY