



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

WEB COPY

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.Nos.573 & 574 of 2017

and

CMP.No.2840 of 2017

Zahurdin (died)

1.Ameenabi

2.Noorulla

3.Anwardeen

4.Badrudeen

... Petitioners / Plaintiffs 2 to 5 / Petitioners(in both CRPs)

Vs.

Mahabubkhan (died)

1.Ammena Khatoon

2.Salimabi

3.Mansoor

4.Nasru

5.Kubru

... Respondents/Defendant 2 to 6 /Respondents  
(in both CRPs)

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 25.11.2016 in I.A.Nos.977 & 978 of 2016 in O.S.No.140 of 2009 on the file of the Additional District Munsif Court, Vellore, Vellore District.

For Petitioners .. Mr.V.Perumal (in both CRPs)

For Respondents .. No appearance.



WEB COPY



## COMMON ORDER

The plaintiffs in O.S.No.140 of 2009 on the file of the Additional District Munsif Court, Vellore are the revision petitioners.

2.Originally, the suit was filed by one Zahurdin seeking permanent injunction, with respect to the property described as Schedule – B to the plaint, which measures 3.78 acres in Wet S.No.125/2, Karugambattur Village. This 3.78 acres is a part of larger extent of land measuring 11.41 acres in Wet S.No.125/2. The plaintiff (Zahurdin) had filed the suit seeking permanent injunction restraining the defendants from interfering with peaceful possession. It is also stated that in that particular property of 3.78 acres, the defendants had already encroached in two portions of the land measuring 20x40 feet and had also put up construction and therefore, an additional relief has also sought in the nature of mandatory injunction to remove the said construction.

2.The defendants filed written statement and contested the claim of the plaintiff.

3.During the course of trial, Zahurdin died and his legal representatives were brought on record, namely the 2<sup>nd</sup> to 5<sup>th</sup> plaintiffs who are the revision petitioners herein.



4. Even before trial could commence, the revision petitioners / plaintiffs had filed I.A.No.1277 of 2014 seeking permission to file additional documents. That particular application was allowed on payment of costs on 09.12.2014. Witness on behalf of the plaintiffs was examined in chief and was also cross-examined.

5. Thereafter, the plaintiff filed two applications namely, I.A.No.977 of 2016 and I.A.No.978 of 2016. They sought the reliefs, to recall PW-1 to adduce further evidence and also permission to file further documents. The reason they gave to file further documents at such belated stage was that the documents 1 to 9 in the list as enclosed were mixed up with the other documents and document numbers 10 and 11 had been obtained quite reasonably. The documents which they sought to produce, were orders passed by the Tahsildar in Land Development, Vellore and exchange of correspondences between the Tahsildar and the original plaintiff Zahurdin and also a copy of an award in LAOP No.979 of 2013 on the file of the Sub Court / Land Acquisition, Vellore.

6. These two applications came up for consideration on 25.11.2016 and naturally, being frustrated by the applications, one of which was a second application to file additional documents, both the applications were dismissed. This necessitated the plaintiffs to file the present Civil



Revision Petition.

WEB COPY

7. Notice had been directed to the respondents/defendants and a perusal of the record show that the defendants had been served through Court notice on 10.03.2017. With respect to the private notice, R1, R2 and R5 had been served on 07.03.2017 and notice with respect to R3 had been returned as door locked. Learned counsel for the petitioner had not filed affidavit of service with respect to R4. However, since the Court notice had been served, the names of the defendants had been printed in the cause list. Let me therefore proceed to pass orders in the Civil Revision Petitions, even though there is no appearance on behalf of the respondents.

8. Perused the records. Heard the learned counsel for the revision petitioners.

9. The suit had been filed seeking permanent injunction with respect to a specific property whose boundaries had been given and which measures 3.78 acres. This was part of a larger area of property. It was also alleged that a specific property are within the suit property with measurement of 20x40 feet had been trespassed by the defendants who had also put up construction. The relief sought in the suit is therefore for permanent injunction to protect possession and also for mandatory



injunction to remove, according to the plaintiffs, the illegal construction put up by the defendants.

10. Naturally, the issues which arise for consideration relate to title of the plaintiffs and to possession by the plaintiffs and relating to possession by the defendants over that particular piece of land of 20x40 feet, and relating to lack of right of the defendants to so enter into possession over that particular property and relating to putting up of construction by the defendants. The plaintiffs have filed additional documents, which are primarily records from the Tahsildar office and correspondences between the plaintiff Zahurdin, who died pending the suit, and the Tahsildar and also an Award Copy in Land Acquisition Original Proceedings.

11. It would only be appropriate, that the parties are afforded necessary opportunity to bring on record all documents during the course of trial. These documents can always be tested during the course of cross-examination. If the documents are found to be irrelevant, then they can be always rejected during the course of judgment. The balance of convenience is always that the parties are permitted to produce documents so long as, they are admissible, relevant and proved in manner known to law and are, of course, genuine. Thereafter, the learned



Trial Judge may take a decision in manner known to law while deciding the issues in the suit. Those issues can be decided, only if the documents are taken on file during the course of trial.

12. With the above observations, the Civil Revision Petitions are allowed, setting aside the orders passed in I.A.Nos.977 of 2016 and 978 of 2016 both dated 25.11.2016 in O.S.No.140 of 2009 passed by the Additional District Munsif Court, Vellore.

13. The Additional District Munsif, Vellore is directed to proceed further with the trial in O.S.No.140 of 2009 and may endeavour to dispose of the same on or before 30.09.2022.

07.03.2022

Internet: Yes/No

Index: Yes/No

smv

To

The Additional District Munsif Court, Vellore.



WEB COPY

7



smv

C.R.P.PD.Nos.573 & 574 of 2017

07.03.2022