



WEB COPY



C.R.P. No.3487 of 2023 &
C.M.P.No.21699 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**Civil Revision Petition No.3487 of 2023 &
C.M.P.No.21699 of 2023**

C.A.Prabhakar

...Petitioner

Vs.

1. P.Sakthi Kumar
2. Peer Mohammed
3. Velayuthan
4. Suguna

...Respondents

Civil Revision Petition filed under Article 227 Constitution of India to set aside the fair order and decreetal order dated 25.07.2023 made in Un-numbered O.S.SR.No.6281 of 2023 on the file of the learned Principal District Munsif, Alandur and to direct the trial court to number the suit.

For Petitioner : Mr.S.Balasubramanian
for Mr.M.Murugan

ORDER

The present petition has been filed to set aside the fair and decreetal order dated 25.07.2023 made in Un-numbered O.S.SR.No.6281 of 2023 on the file of the learned Principal District Munsif, Alandur and to



C.R.P. No.3487 of 2023 &
C.M.P.No.21699 of 2023

direct the trial court to number the suit.

WEB COPY

2. The brief facts of the case are as follows:-

The petitioner, who is the plaintiff has preferred a suit in O.S.SR.No.6281 of 2023 for the relief of permanent injunction restraining the respondents / defendants, their men and agents from alienating or interfering with the petitioner's peaceful possession and enjoyment of the suit schedule property without following due process of law. The said suit is dismissed as not maintainable, as against the same, the present Revision has been filed.

3. The learned counsel for the petitioner would submit that the lower court ought to have numbered the suit and considered the relief sought by the petitioner / plaintiff. Further, the court below ought to have directed the petitioner / plaintiff to file an application under Order 2 Rule 3 of C.P.C., thereby pleaded to allow the present petition.

4. Heard the learned counsel for the petitioner and perused the documents placed on record.

5. It is relevant to note that the court below while dismissing the suit has held that when petitioner himself has admitted that he has been claiming to be an agreement holder and is still in possession of remaining 4



C.R.P. No.3487 of 2023 &
C.M.P.No.21699 of 2023

grounds of lands in Survey Nos.388/2, 388/1B, 388/1A, the petitioner has an option to file suit for specific performance and the suit for permanent injunction is not maintainable in view of bar contained in Section 41 (h) of Specific Relief Act, wherein it states that 'injunction cannot be granted when equally efficacious remedy can be obtained under substantive law'.

6. On a perusal of plaint, it could be seen that eventhough sale agreement has been entered for 10 grounds 815 sq.ft., only 6 grounds of lands were conveyed in the sale deed, however, remaining four grounds and thereabouts of land is still retained by the petitioner. Whether any sale deed has been entered into or not with respect to the remaining four grounds would come to light only when the respondents / defendants are heard, hence, this Court is of the view that the court below entered into the shoes of the respondents / defendants and rejected the plaint at the threshold. The court below ought to have heard the respondents / defendants' side case and decided the suit in accordance with law.

7. It is significant to note that the court below was of the view that the petitioner / plaintiff has an alternative relief of specific performance and there is a bar under Section 41(h) of the Specific Relief Act, when that being the case, the court below ought not to have dismissed the suit



C.R.P. No.3487 of 2023 &
C.M.P.No.21699 of 2023

straight away, but should have afforded an opportunity to amend the plaint.

It is then for the petitioner / plaintiff to amend the plaint or to face the possibility of the suit being dismissed.

8. In view of the above, the suit in O.S.Sr.No.6281 of 2023 is restored to file and the learned Principal District Munsif at Alandur is directed to afford an opportunity to the petitioner to amend the plaint, issue notice, hear the case of the respondents and thereafter, decide the case in accordance with law.

Accordingly, the present Revision is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

31.10.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

The Principal District Munsif, Alandur



WEB COPY



C.R.P. No.3487 of 2023 &
C.M.P.No.21699 of 2023

V.BHAVANI SUBBAROYAN J.

ssd

**Civil Revision Petition No.3487 of 2023 &
C.M.P.No.21699 of 2023**

.10.2023