



CRP No.379 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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B.Sumathi

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Urban Habitat Development Board,
No.5, Kamarajar Salai, Chennai - 600 005.

2.The Assistant Engineer,
Corporation of Chennai,
Division 173, R.A.Puram, Chennai- 600 028.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order in OS.SR No.16227 of 2023 dated 28.11.2023 on the file of the I Assistant City Civil Court, Chennai and allow this Revision.



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For Petitioner : Mr.G.Appavoo

ORDER

The civil revision petition is filed set aside the order in OS.SR No.16227 of 2023 dated 28.11.2023 on the file of the I Assistant City Civil Court, Chennai and allow this Revision.

2. The revision petition is the plaintiff and the respondents are defendants in OS SR No.16227 of 2023. The petitioner/plaintiff has filed the suit for declaration and permanent injunction. The learned Judge, by order dated 28.11.2023 rejected the suit as not maintainable. Challenging the said order, the petitioner has filed the present civil revision petition.

3. The learned counsel for the petitioner submitted that the plaint schedule property belongs to Tamil Nadu Slum Clearance Board and by mistake, it was represented as poromboke land in the Writ Petition in WP No.34046 of 2017. Based on the said representation, the writ court, by order dated 25.04.2018, dismissed the writ petition and directed to remove



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the encroachment. The petitioner is in possession for more than 45 years. Therefore, the suit is maintainable. Hence, seeking to set aside the impugned order and to be taken on file.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The revision petition is the plaintiff and the respondents are defendants in OS SR No.16227 of 2023. The petitioner/plaintiff has filed the suit for declaration and permanent injunction. The learned Judge, by order dated 28.11.2023 rejected the suit as not maintainable in OS SR No.16 of 2023 with the following observation:

3. On perusal of records and plaint it is seen that the suit schedule property was originally belongs to the Tamilnadu Slum Clearance Board. The plaintiff is an encroacher in the property. Hence, one R.S.Manoharan has filed the WP No.34046 of 2017 before the Hon'ble High Court against the plaintiff and the defendant and others to dispose of his representation. The Hon'ble High Court on 24.01.2018 has passed an order



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directing the Corporation to remove the encroachment made by the plaintiff herein.

4. On perusal of the plaint it is seen that the plaintiff has earlier filed a suit in OS No.2565 of 2016 for the relief of permanent injunction. The said suit was also dismissed on 10.08.2017. Further, the plaintiff filed a review application No.53 of 2018 against the order passed by the Hon'ble High Court in WP No.34046 of 2017 the same was also dismissed by the High Court on 25.04.2018. The above said facts, exhibit the fact that the plaintiff is an encroacher of the suit property.

5. In that situation the plaintiff again come forward with the present suit praying the above said relief.....

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7. It is pertinent to point out that the Hon'ble High Court of Madras in the above said W.P.No.34046 of 2017 has categorically ordered the Corporation of Chennai to take coercive action. In that event, the plaintiff cannot pray that he is entitled for declaration to reside in the property which amounts to challenging the order passed by Hon'ble High Court of Madras which cannot be entertained by this Court. Hence on the said ground alone also the suit is liable to be rejected and the same is rejected.



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6. The reasons stated by the learned judge in the impugned order is that the petitioner/plaintiff had already filed the suit for permanent injunction in OS No.2565 of 2016, which was dismissed on 10.08.2017. Further, the review application No.53 of 2018 filed by the petitioner/plaintiff against the order passed by this Court in WP No.34046 of 2017 was also dismissed. In the writ petition, the Writ Court, by its order dated 25.04.2018 had directed to remove the encroachment made by the petitioner. In these circumstances, for the same property, declaring plaintiff's right is not maintainable. Therefore, there is no infirmity in the order passed by the learned judge by rejecting the plaint. There is no merit in the Revision. Hence, the civil revision petition is dismissed. There shall be no order as to costs.

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Index: Yes/No
Internet: Yes/No
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V.SIVAGNANAM, J.,

mrn

To
The I Assistant City Civil Court, Chennai

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