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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P.No.1437 of 2018

1.G.Loganathan
2.G.Nagalingam … Petitioners

Vs

Srinivasan … Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 29.01.2018 made in O.S.Sr.No.10693 of 2017 by Trial Court to number the suit and to proceed with the same in accordance with law by allowing the above Civil Revision Petition.

For Petitioners : Mr.R.Suresh Kumar

ORDER

This Civil Revision Petition has been filed against the order dated 29.01.2018 made in O.S.Sr.No.10693 of 2017 by Trial Court to

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number the suit and to proceed with the same.

2.The petitioner filed a suit in O.S.Sr.No.10693 of 2017 for delivering of possession of the 'B' Schedule property. The suit file seeking for the following relief:-

> *(i)directing the defendant to handover the vacant possession of the suit schedule property to the plaintiffs after removal of the superstructures therein;*
>
> *(b)for a permanaent injunction restraining the defendant, his men, agents servants and others authorized by him from in any way putting up further constructions in the suit "B" property or in any manner;*
>
> *(c) for the costs of the suit;*

3. The Subordinate Judge, Poonamallee observed that the Suit property is still vested with the Government and further, on perusal of the Plaint Document No.6, that is the order of this Court disclosing that the Tamil Nadu Housing and Urban Development Department has been directed to consider the petitioners representation for reconveyance and

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therefore, the Court Below is of the *prima facie* opinion that there is no cause of action. In such circumstances and the contention of the learned counsel for the plaintiffs is not acceptable and accordingly, the plaint is rejected. Aggrieved by the said docket order, the present Civil Revision Petition is filed.

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

5. It is the contention of the learned counsel for the petitioner that the Trial Court has no jurisdiction to go into the merits and demerit is of the statements contained in the plaint and consequently, the order rejecting the plaint on the merits of the claim made by the plaintiffs is perse, perverse and improper exercise of jurisdiction. The Trial Court has committed grave illegality perplexing on the face of the record, which resulted in grave miscarriage and travesty of justice to the plaintiffs. It is further contended that the Trial Court has no jurisdiction

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to reject the plaint for the reasons which do not fall within the four corners of Order VII Rule 11 of C.P.C. The Trial court had committed grave illegality in holding that the plaint is not maintainable and rejected the plaint at the numbering stage as the plaint pleadings and the suit claim were not proved by the evidence. The learned counsel finally submitted that the order of the Trial court is unsustainable and against the Statute and also without jurisdiction and as such it is liable to be set aside.

6. Having considered the submissions of the learned counsel for the petitioner and on careful perusal of the Docket order passed by the Trial Court, it appears that the plaintiffs have filed the suit claiming to be the owner of the suit scheduled property. But, in the plaint averments, it is state that the suit property is already acquired by the State Government for the purpose of extention of the road under notification in G.O.Ms.No.263 dated 23.01.1975 and accordingly, the plaint was rejected for want of maintainability as the petitioners are not

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the owner of the suit schedule property.

7. In view of the fact that the suit property was acquired by the State Governement, the suit was represented and it is contended that the plaintiffs are the legal heirs of the deceased Gopal, who was the original owner who have given the representation with the Housing Board for return of the unused 23 Cents of land out of 93 Cents which was acquired. After the demise of their father, Gopal, the property devolved upon the plaintiffs, whereas, the Housing Board did not comply the same. It appears that the petitioners filed a Writ Petition is W.P.No.1140 of 2006 before this Court and the same was disposed of by its order dated 27.04.2006 with a direction to the State Governement to consider the representation of the petitioners dated 19.08.2005 on merits and in accordance with the law within a period of eight (8) weeks from the date of receipt of a copy of this order

8. With regard to the return of the unused land of 23 Cents by the

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State Governement, it appears that inspite of specific direction from this Court, the reconveyance process is not yet finalised by the State Governement only. It is for the plaintiff to take steps to implement the order of this Court in W.P.No.1140 of 2006 dated 27.04.2006. Admittedly, the suit scheduled property is not in the possession of the petitioner at the time of filing of the suit and as such this Court is not inclined to interfer with the docket order passed by the Subordinate Judge, Poonamallee in rejecting the plaint.

9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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gba
Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

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The Subordinate Judge,
Ponnamallee.

BATTU DEVANAND,J.

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C.R.P.No.1437 of 2018
and C.M.P.No.10884 of 2019

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