

(2011) 08 MAD CK 0196

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 1135 of 2011 and M.P (MD) No. 1 of 2011

Mohanavel and Sathiaselvan

APPELLANT

Vs

Muruganandham, Mahalakshmi and V. Venugopal

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 22
Constitution of India, 1950 — Article 227
Specific Relief Act, 1877 — Section 37

Citation : (2011) 08 MAD CK 0196

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : V. Meenakshisundaram and A. Thirumoorthy, for the Appellant; R. Sundar Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—This petition has been filed by the Petitioners to set aside the fair and decretal order dated 06.05.2011 passed in C.M.A. No. 79 of 2010 on the file of Additional District and Sessions Court/Fast Track Court No. 2, Tiruchirappalli reversing the fair and decretal order dated 20.08.2010 in I.A. No. 319 of 2010 in O.S. No. 436 of 2010 on the file of the Principal Subordinate Court, Tiruchirappalli.

2. The nutshell of the case is as follows:

(i) The first and second Respondents/Plaintiffs have filed suit in O.S. No. 436 of 2010 against the revision Petitioners/Respondents 3 to 5/Defendants for permanent injunction restraining the Defendants, their men, agents, servants claiming under them from in any manner interfering with the peaceful possession and enjoyment of the plaint schedule mentioned property and other relief. The said suit was resisted by the Defendants after filing written statement. The Plaintiffs have filed the suit along with an interlocutory application for a temporary injunction restraining the Respondents/Defendants. This injunction

application had been opposed by the Respondents/Defendants.

(ii) After hearing the arguments of the counsels on both the sides and on perusing the averments of both the parties, the learned principal subordinate Judge, Trichy dismissed the said injunction application. Aggrieved by the dismissal of the injunction application, the Plaintiffs have filed a civil miscellaneous appeal before the Additional District and Sessions Court/Fast Track Court No. II, Trichy. The learned Judge, after hearing the arguments of Learned Counsels on both sides and after perusing the relevant records of the parties and on perusing the impugned order of the learned principal Subordinate Judge, and set aside the order and decretal order passed in I.A. No. 319 of 2010 dated 20.08.2010 and granted an ad-interim injunction restraining the Respondents/Defendants.

(iii) Against the decree and judgment passed in the civil miscellaneous appeal No. 79 of 2010 dated 06.05.2011, the above civil revision petition has been filed by the 3rd and 4th Defendants.

3. The Learned Counsel for the revision Petitioners submitted that the appellate court has failed to note that the 1st and 2nd Respondents herein/Plaintiffs have suppressed the suits in O.S. No. 37 of 2010 before Principal District Munsif, Trichy, O.S. No. 216 of 2010 before 1st Additional District Munsif, Trichy and O.S. No. 623 of 2005 before 2nd Additional District Munsif, Trichy. It was also pointed out that the appellate court has failed to give reasons for reversing the well-considered order of the trial court in the injunction application. It also submitted that the appellate court has failed to note that the property involved in the present suit is one and the same of the schedule properties in O.S. No. 37 of 2010, O.S. No. 216 of 2010 and O.S. No. 623 of 2005. It was pointed out that the appellate court while granting injunction in favour of the 1st and 2nd Respondents herein /Plaintiffs, failed to record findings regarding (a) prima facie case (b) balance of convenience and irreparable injury which is against the spirit of order 39, Rule 1 and 2 of code of civil procedure.

4. The Learned Counsel for the Respondents argued that the property had been succeeded by the 2nd Plaintiff from her parents, namely, Ramadas Valambar and his wife Muthu Kannammal. As such, the Plaintiffs are enjoying the suit property. In order to prove the Plaintiffs' case, they had marked 16 documents including encumbrance certificate and previous parent documents of the property. There is a prima facie case made out by the Plaintiffs. Thereafter, the civil miscellaneous appeal was allowed. Subsequently, interim order was granted.

5. In support of his arguments, the Learned Counsel for the Respondent cited a judgment in the case of Rt. Rev. Dr. H.A. Martin and Samuel Gunaseelaraj Vs. The Tamil Evangelical Lutheran Church and Others, . The relevant portion of the said judgment reads as follows:

Constitution of India, Article 227 - Code of Civil Procedure, 1908 (5 of 1908), Sections 22 to 25 - Court can direct transfer of all cases pending in several

Courts of different territorial jurisdiction to one Court and also give further direction that all such future Suits should be filed in said Court only on taking into consideration pendency of several litigations pending before different Courts on same subject matter, relief sought in such Suits and results flowing from orders passed on same subject matter pending in different Courts - Such order could be passed both an administrative side of High Court and on Judicial side - Directions given.

6. In another judgment in the case of S.V. Doraisamy v. T. Dayalan reported in 2002 (2) CTC 462. The relevant portion of this judgment reads as follows:

Code of Civil Procedure, 1908, Order 9, Rules 1 and 2 - Specific Relief Act, 1872, Section 37 - Temporary injunctions - Principles governing interim injunctions - Person seeking injunction should establish three aspects a) he has prima facie case b) balance of convenience in his favour c) Status quo should be maintained - Prima facie case can be said to exist if there is reasonable and arguable case for Petitioner and it is not necessary that Petitioner should make out strong prima facie case - Court should lean in favour of maintenance of status quo once arguable case for Petitioner is made out - If in event of Petitioner losing his case Respondent could be compensated in terms of money -.

7. The Learned Counsels on both sides have jointly submitted that the connected suits, namely, in O.S. No. 623 of 2005 on the file of II Additional District Munsif, Trichy, O.S. No. 37 of 2010 on the file of Principal District Munsif, Trichy and one other suit in O.S. No. 216 of 2010 on the file of I Additional District Munsif, Trichy, are pending. Hence, the Learned Counsels have sought for joint trial, after transferring the cases to the file of Principal Subordinate Court, Trichy.

8. In view of the facts and circumstances of the case, arguments advanced by the Learned Counsels on either side and on perusing the order and decretal order passed in the civil miscellaneous appeal, this Court is of the considered opinion that (1) O.S. No. 623 of 2005 has been filed by the 2nd Respondent/Mahalakshmi herein against the Defendants namely Arumugam and Mrs. Veeramani. Both the 2nd Defendants are not parties in the above revision petition. O.S. No. 37 of 2010 has been filed by the 2nd Respondent herein against 10 Defendants namely, Pachiammal, Kokila, Thirumathi Selva, Selvakumar, Velayudham, Chitiramorthy, Muruganantham, Kamakshi, Thangapappa and Puzhagmanai @ Muthukrishna Kavirayyar. Out of these 10 Defendants, the 10th Defendant alone is party in the revision petition. O.S. No. 216 of 2010 has been filed by one Sathiaselvan, who is the 2nd revision Petitioner herein against the 1st and 2nd Respondents herein and three others namely chitira murthy, Selvakumar and Velayudham. These three persons are not parties in the above revision petition. Therefore, this Court, in the absence of the above mentioned parties in the revision petition, cannot transfer all the above mentioned three suits for a joint trial before the Principal Subordinate Court, Trichy.

9. This Court further opines that the learned Appellant court namely Additional District and Sessions Court, Trichy after well-considering the averments of the parties and after verification of the relevant records, had allowed the civil miscellaneous appeal. As such, this Court is not warranted to interfere with the findings in the C.M.A. No. 79 of 2010. Hence, this Courts confirms the order made in C.M.A. No. 79 of 2010 dated 06.05.2011. 10. However, this Court directs the learned Principal Subordinate Court, Trichy to dispose of the case in O.S. No. 436 of 2010 within a period of four months from the date of receipt of this order, without being influenced by this Court's discussions.

11. In the result, the above civil revision petition is disposed of with the above observations. Consequently, the order and decretal order passed in C.M.A. No. 79 of 2010 dated 06.05.2011 on the file of Additional District Sessions Court/Fast Track Court No. II, Trichy reversing the order and decretal order dated 20.08.2010 passed in I.A. No. 319 of 2010 in O.S. No. 436 of 2010 on the file of the Principal Subordinate Court, Trichy is confirmed. Connected miscellaneous petition is closed. There is no order as to costs.