
(2006) 09 MAD CK 0285

In the Madras High Court

Case No : C.R.P. (NPD) No. 1674 of 2005 and C.M.P. No. 14491 of 2005, C.M.P. No. 2905 of 2006

N. Viswanathan

APPELLANT

Vs

Chandrakasu and The Panchayat Union Kumaratchi

RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 227

Citation : (2006) 09 MAD CK 0285

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : R. Srinivasan, for the Appellant; V. Krishnan for Respondent-1 and Mr. R. Subramanian for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—The third party has filed this revision petition challenging the judgment dated 31.12.2004 passed in O.S. NO. 250 of 2003 on the file of the Additional District Munsif, Chidambaram. The suit was for injunction. In the suit, the defendant is Panchayat Union Kumarathci represented by Block Development Officer. The revision petitioner is one Viswanthan said to be the President of Thavarthampattu Panchyat, which comes within the jurisdiction of the Panchayat Union Kumaratchi. The revision petitioner would challenge the decree and judgment passed in O.S. No. 250/2003 on the ground that the suit property comes within the jurisdiction of the revision petitioner and the proper defence was not putforth in the written statement by the defendant in O.S. No. 250/2003 and because of the decree and judgement passed in O.S. No. 250/2003, the most affected party will be the revision petitioner.

2. The learned counsel for the revision petitioner relied on the decisions of this Court reported in Suguna Poultry Farm Limited, S.C.M. Creations and NEG Micon (India) Pvt. Ltd. Vs. Arul Mariamman Textiles Limited, and 1995 (1) LW 141

(Annapooni Vs. Janaki) and contended that if it is found by the High court that the trial Court without jurisdiction has passed a decree, then the power of Article 227 can be exercised by this Court to set aside the decree.

3. The facts of the above said cases are not applicable to the present facts of the case. In one of the latest judgments of this Court reported in 2005 (4) MLJ 155 = 2006-1-L.W.677 (Ganesa Naicker and another Vs. Kokilambal and others), it has been observed that the power of superintendence conferred by Art.227 is to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors and the power of superintendence under Art.227 of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of appeal and the High Court cannot, in exercise of its jurisdiction under Art.227 convert itself into a Court of appeal.

4. It is agreed by both parties that an appeal in A.S. No. 52/2005 has been preferred by the defendant as against the judgment and decree passed in O.S. No. 250/2003 on the file of the District Munsif, Chidambaram and the appeal is now pending before the Sub-Court, Chidambaram. If the revision petitioner is really affected by the decree and judgment passed in O.S. No. 250/2003, then it is open for him to file necessary application before the first appellate Court and to get himself impleaded in A.S. No. 52/2005. This Court is of the view that the decree and judgment passed in O.S. No. 250/2003 cannot be challenged before this Court, when the matter is pending in appeal before the Sub-Court in A.S. No. 52/2005. I do not find any merit in this revision petition and the same is dismissed accordingly. No costs. Consequently, connected CMPs are also dismissed. The learned counsel for the revision petitioner represents that this Court may direct the first appellate Court to allow the application in case the revision petitioner files any application under Order 1 Rule 10 of CPC. Such an order cannot be passed by this Court because it is upto the first appellate Court to decide whether the revision petitioner is a necessary party or not in the suit. In case revision petitioner files an application under Order 1 Rule 10 of CPC before the first appellate Court, the first appellate Court has to decide the same on merits. The first appellate Court is directed to dispose of A.S. 52.2005 as early as possible.