

(2014) 07 MAD CK 0061

In the Madras High Court

Case No : Civil Revision Petition No. 1432 of 2005

Vanniya Kula Shatriya Vellala Maharaja Madalayam

APPELLANT

Vs

A. Ramakrishnan

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, 26
Specific Relief Act, 1963 — Section 6

Citation : (2014) 07 MAD CK 0061

Hon'ble Judges : R. Karupiah, J

Bench : Single Bench

Judgement

R. Karupiah, J.—The revision petitioner, who is the defendant in the original suit filed this revision petition as against the decree and judgment passed in O.S. No. 413 of 1989, dated 24.02.2005 on the file of the Additional District Munsif Court, Thiruvannamalai.

2. For the sake of convenience, the defendant in the original suit is referred as the revision petitioner and the plaintiff in the original suit is referred as the respondent hereafter.

3. The respondent herein filed a suit in O.S. No. 413 of 1989 under Section 26 and Order 7, Rule 1, of CPC and prayed for (a) declaration that the plaintiff is entitled to recover the possession from the defendant as having been illegally ejected, (b) directing the delivery of possession to the plaintiff by the defendant (c) to restrain the defendant by means of a permanent injunction from leasing out the property to anybody (d) for costs.

4. The trial Court has tried the above said suit along with the connected suit in O.S. No. 914 of 1988 wherein, the plaintiff is seeking permanent injunction against the defendant in the same suit property.

5. After hearing both sides, the trial Court has dismissed the suit in O.S. No. 914 of 1988 filed by the respondent herein and decreed the suit in O.S. No. 413 of

1989 and granted the relief as prayed for in the plaint.

6. Admittedly, the revision petitioner has not preferred any first appeal as against the judgment and decree of the trial Court, but the revision petitioner has preferred this civil revision petition instead of the first appeal.

7. The learned counsel appearing for the revision petitioner pointed out that the trial Court has held that the respondent herein trespassed into suit property and therefore, granted the relief of recovery of possession. The above said discussion of the trial Court shows that the trial Court has granted the decree only as per Section 6 of the Specific Relief Act and therefore, the revision petition is maintainable.

8. The learned counsel appearing for the respondent submitted that the suit is not filed under Section 6 of the Specific Relief Act, but the suit is filed under Order 7, Rule 1 and Section 26 of C.P.C., and the decree has been passed accordingly and therefore, the revision petition is not maintainable.

9. A perusal of the entire plaint, written statement and also the judgment and decree passed by the trial Court revealed that nowhere the trial Court has granted the relief under Section 6 of Specific Relief Act. If any grievance in the above said judgment and decree, the revision petitioner ought to have filed the first appeal as per the provisions of Civil Procedure Code. Therefore, the revision petition is not at all maintainable.

10. The learned counsel appearing for the revision petitioner further submitted that the revision petitioner has filed this civil revision petition in wrong forum and hence, the learned counsel seeks a liberty to file the first appeal before the first Appellate Court and the period pending the civil revision petition before this Court may be excluded since the period for filing the first appeal already lapsed and also prayed for to grant two weeks further time to obtain copies of the documents from this Court to file the first appeal before the appellate Court.

11. The learned counsel for the respondent submitted that if liberty is granted to file the first appeal and the period of pending proceeding before the Court is excluded, the first Appellate Court may be directed to dispose of the first appeal within a specific period.

12. Considering both sides submissions and facts and circumstances of the case, this Court is of the view that the revision petition is to be dismissed with liberty to file the first appeal.

13. In the result, the revision petition is dismissed and liberty is given to the revision petitioner to file the first appeal and the period pending the civil revision petition before the Court and also further two weeks time to receive the copy of the order from this Court are excluded for the purpose of limitation. Further, the first appellate Court is to directed to dispose of the first appeal, within a period of six months from the date of receipt of this order. No order as to costs. Consequently, the connected Miscellaneous Petition is also closed.