

Sivapriya Constructions Vs. P.T.Mtilda Prema Devaraj

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SooperKanoon Citation : sooperkanoon.com/1169231

Court : Chennai

Decided On : Sep-18-2013

Judge : S.Tamilvanan

Appellant : Sivapriya Constructions

Respondent : P.T.Mtilda Prema Devaraj

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

18. 09-2013 CORAM : THE HONOURABLE MR.JUSTICE S.TAMILVANAN C.R.P (PD).No.2477 of 2013 and M.P.No.1 of 2013 M/s. Sivapriya Constructions Rep. by its Partner B.D.Narasa Reddy S/o. Benjala Reddy, No.37, Saradha Enclave, Plot No.J, Saradha Nagar, Virugambakkam, Chennai 600 092. Petitioner vs.

1. P.T.Mtilda Prema Devaraj 2. P.T.Carolin Suganavathi 3. P.T.Flori Hemavathi 4. Paulsujarnath 5. Rubina Sindhuja 6. Dennison Vimalnath 7. Wilson Sathyanathan 8. Solomon Vijaya Amarnath 9. Silviya Nithya 10. Noshiba Esthar Yuvarani 11. K.G.Vijayaraghavan Respondents Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the Judgment and Decree, dated 26.06.2013 made in C.M.A.No.13 of 2013 on the file of the Subordinate Judge, Poonamallee, confirming the fair and decretal order, dated 02.03.2013 made in I.A.No.66 of 2013 in O.S.No.26 of 2013 on the file of the Additional District Munsif, Poonamallee. For Petitioner : Mr.S.V.Jeyaraman Senior Counsel for Mr.R.Bharath

Kumar For Respondents : No appearance for R1 to R3 Mr.Kumaradevan for R4 to R11

ORDER

This Civil Revision has been preferred under Section 115 of the Code of Civil Procedure, against the Judgment and Decree, dated 26.06.2013 made in C.M.A.No.13 of 2013 on the file of the Subordinate Judge, Poonamallee, confirming the fair and decretal order, dated 02.03.2013 made in I.A.No.66 of 2013 in O.S.No.26 of 2013 on the file of the Additional District Munsif, Poonamallee.

2. The suit in O.S.No.26 of 2013 was filed by the respondents 1 to 3 herein against the revision petitioner and 8 others, seeking permanent injunction restraining the defendants, their men, agents or servants from putting up any further construction in the suit property, pending disposal of the suit in O.S.No.270 of 2012 and other consequential relief.

3. In the said suit, Interlocutory Application in I.A.No.66 of 2013 was filed by the respondents 1 to 3, being the plaintiffs in the suit under Order 39 Rule 1 and 2, seeking interim injunction, till the disposal of the suit.

4. As per the order, dated 02.03.2013, learned Additional District Munsif, Poonamallee, directed both the parties to maintain status quo as on the date of the impugned order, till the disposal of the suit in O.S.No.26 of 2013. Aggrieved by which, C.M.A.No.13 of 2013 was filed by the petitioner herein, however, by Judgment and decree, dated 26.06.2013, learned Subordinate Judge, Poonamallee, confirmed the order and decretal order passed in I.A.No.66 of 2013 by the trial court in the said suit and dismissed the Civil Miscellaneous Appeal. Aggrieved by which, this Civil Revision has been preferred by the petitioner herein.

5. In spite of service of notice, there was no representation for the respondents 1 to 3, who filed the suit before the trial court. Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 4 to 11. Mr.S.V.Jeyaraman, learned Senior counsel for the Revision petitioner submitted that the suit in O.S.No.26 of 2013 itself is not legally maintainable, since the relief sought for is for permanent injunction restraining the

defendants not to put up any construction in the suit property till the disposal of another suit filed by the same plaintiff in O.S.No.270 of 2012.

6. It is an admitted fact that the plaintiffs, defendants 1 and 4 and late Jayapal Sundarnath are the children of late Paul Thangadurai and his wife Tmt.Esther Ammal and defendants 2, 3 and 5 to 7 are sons and daughters of the deceased Jayapal Sundarnath, brother of the plaintiffs and the defendants 1 and 4.

7. Mr.S.V.Jayaraman, learned Senior counsel appearing for the petitioner submitted that the revision petitioner / 8th defendant has purchased the property from the defendants 1 to 7, by way of a registered sale deed, dated 10.05.2012 for valuable consideration and the sale deed was registered as Document No.1466/12 in the office of the Sub-Registrar, Poonamallee, even prior to the filing of the suit in O.S.No.270 of 2012. According to the learned Senior counsel for the petitioner, the defendants 1 to 7, vendors of the revision petitions had saleable right in the property, in view of the registered Will, dated 11.03.1991 executed by their father, late Paul Thangadurai, who owned the property. As submitted by the learned Senior counsel, it is seen from the material papers filed in the typed set of papers that the respondents have not disputed their relationship with late Paul Thangadurai and his wife deceased Tmt.Esther Ammal.

8. It is averred in the accompanying affidavit that the petitioner is a bonafide purchaser for valuable consideration, who purchased the property only after verifying the title of the suit property in favour of his vendors, who are the defendants 1 to 7 in the suit.

9. Learned Senior counsel appearing for the petitioner further submitted that having purchased the property for valuable consideration, after getting permission from the competent authority, the petitioner / 8th defendant demolished the old superstructure, that was available in the suit property and as per the sanctioned plan and permission obtained from the concerned authority, commenced the construction work in the suit property and the construction was over, except plastering and interior decorations. At that stage, the interim order was passed by the Court below, to maintain status quo, till the disposal of the suit, though the suit was filed only in the year 2013. In support of his contention, the learned Senior

counsel produced the photocopies pertaining to the construction made in the suit property.

10. Mr.Kumaradevan, learned counsel appearing for the contesting respondents 4 to 11 has not disputed the stage of construction and the photograph showing the construction work made in the suit schedule property. The contesting respondents 4 to 11 have admitted the fact that the revision petitioner has completed the construction, as seen in the photographs, except the plastering works and interior decoration.

11. It is argued on the side of the Revision petitioner that the respondents 1 to 3, who are the plaintiffs in the suit, knowing the fact that the property was sold by defendants 1 to 7 to the petitioner / D8, by way of registered sale deed and there was demolition of the old superstructure and the present construction being made by the petitioner / 8th defendant, a building promoter, filed the suit with an ulterior motive to cause obstruction to the construction work and make loss to the petitioner / 8th defendant. However, without considering the real facts and circumstances, the trial court granted an interim order to maintain status quo, till the disposal of the suit in O.S.No.26 of 2013, which is prejudicial to the legitimate right of the petitioner and causing unreasonable heavy loss to the petitioner.

12. It is also brought to the notice of this Court that in spite of service of notice, the respondents 1 to 3, who filed the suit have not appeared before this Court, only to protract the proceedings and make stagnation in the progress of the further works like plastering and interior decoration, the suit was filed, which would cause unreasonable heavy loss to the petitioner, however, the Courts below have not considered the same. It was argued by the learned counsel for the petitioner that the suit in O.S.No.26 of 2013 was filed only in the year 2013, hence, for the disposal of the suit, normally it may take number of years, hence with an ulterior motive, the petition was filed by the respondents 1 to 3. However, the courts below, directed to maintain status quo till the disposal of the suit.

13. It is seen that the main relief sought for in the suit in O.S.No.26 of 2013 is for permanent injunction, restraining the defendants from putting up any construction till the disposal of another suit in O.S.No.270 of 2012. Without filing any

interlocutory application in the said suit, seeking interim injunction till the disposal of the suit in O.S.No.270 of 2012, the respondents 1 to 3 / plaintiffs filed the present suit in O.S.No.26 of 2013 and sought for permanent injunction till the disposal of the other suit in O.S.No.270 of 2012.

14. As contended by the learned Senior counsel appearing for the petitioner, it could be construed only as an abuse of process of law, in the light of the decisions rendered by this Court in Aditya Masala Nani Agro Foods (P) Ltd. v. M.Selvaraj, reported in (2007) 1 MLJ611 wherein this Court (K.CHANDRU, J) has held thus : ".11. In the present case, it is clearly seen that the revision petitioner's industrial activity that was licensed by the necessary authorities was brought to a grinding halt by an ad-interim injunction granted by the trial Court and the bar under Section 46 of the Act has not been considered and therefore this Court can entertain a revision petition under Article 227 of the Constitution of India. Even while granting the ad-interim injunction, the trial Court has not given any reason and by ipsi dixit has granted the order contrary to the provisions of the Act and also the various decisions rendered interpreting the said provisions by this Court and the Apex Court. One need not list out all those decisions as the said proposition does not require any authority.". The present revision has been preferred under Section 115 CPC, which is legally maintainable.

15. The earlier suit was filed by the respondents 1 to 3 in O.S.No.270 of 2012. A copy of the plaint relating to the suit is also available in the typed set of papers and it is seen that the suit in O.S.No.270 of 2012 was filed by the respondents 1 to 3 herein, seeking declaration of a Will, dated 11.03.1991, executed by late Paul Thangadurai in favour of the defendants 2,3 and 5 to 7 in Document No.16/1991 as null and void and permanent injunction against the defendants 1 to 4, therein, in respect of possession and enjoyment. The respondents 1 to 3 / plaintiffs have admitted that the defendants 1 and 4 are the sons of late Paul Thangadurai and the defendants 2 and 3 are the children of a deceased son of late Paul Thangadurai.

16. The respondents 1 to 3 / plaintiffs could have filed application, seeking interim injunction only in the said suit in O.S.No.270 of 2012. However, the present suit in

O.S.No.26 of 2013 was filed seeking permanent injunction restraining the petitioner herein and 8 others not to put up any construction till the disposal of the other suit in O.S.No.270 of 2012, which could be construed only as an abuse of process of law and the Court.

17. Even as per the pleading of the respondents 1 to 3 / plaintiffs, they are not entitled to claim right for the entire property. If at all they could have filed a suit for partition or declaration of title and consequential other reliefs, in respect of the share in the property. As contended by the learned Senior counsel appearing for the petitioner and the learned counsel appearing for the other respondents 4 to 11, the total extent of the property is 7132 sq.ft, out of which, the petitioner has purchased only 3811 sq.ft. Even if the respondents 1 to 3 have any share, that could be decided, based on equity. The respondents 1 to 3 / plaintiffs had failed to raise their plea and get any interim order, preventing the demolition of old superstructure and putting up new construction by the petitioner, as per the sanctioned plan.

18. On the facts and circumstances, passing an interim order directing both the parties to maintain status quo till the disposal of the suit, that was filed in the year 2013, would certainly be prejudicial to the petitioner. Hence, such an order could not have passed by the trial court and confirmed by the appellate court. Even if there was any ad-interim injunction granted, as per Order 39 Rule 1 and 2 CPC, the application should have been disposed of within 30 days from the date of the interim order. However, the Courts below passed an order directing both the parties to maintain status quo till the disposal of the suit in O.S.No.26 of 2013, which would not meet the ends of justice, since the relief sought for in the suit itself is not legally maintainable and the respondents 1 to 3 / plaintiffs, have got the order of status quo, after the demolition of the old superstructure by the petitioner, pursuant to the sale deed and the completion of the construction, as admitted by the petitioner and the contesting respondents 4 to 11. It is also made clear that even if the respondents 1 to 3 / plaintiffs are entitled to any share in the property, as some of the legal heirs of late Paul Thangadurai and Esther Ammal, such allotment could be possible on equity.

18. In the result, this Civil Revision Petition is allowed and the impugned Judgment and Decree, dated 26.06.2013 made in C.M.A.No.13 of 2013 on the file of the Subordinate Judge, Poonamallee, confirming the fair and decretal order, dated 02.03.2013 made in I.A.No.66 of 2013 in O.S.No.26 of 2013 on the file of the Additional District Munsif Court, Poonamallee is hereby set aside and the Interlocutory Application filed by the respondents 1 to 3 / plaintiffs in I.A.No.66 of 2013 in the suit is also dismissed. Consequently, connected miscellaneous petition is closed. The court below is directed to dispose the suit as early as possible on merits in accordance with law, within six months from the date of receipt of a copy of this order, uninfluenced by the findings of this Court, if any in this order. However, no order as to costs. 18-09-2013 Index : Yes Internet : Yes tsvn To 1. The Subordinate Judge Poonamallee.

2. The Additional District Munsif Poonamallee. S.TAMILVANAN, J tsvn Order in C.R.P (PD).No.2477 of 2013 18-09-2013

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