

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Feb-01-2016

Judge : Satish K. Agnihotri & M. Venugopal

Appeal No. : M.P. No. 1 of 2015 in W.A. Sr. No. 91307 of 2015

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. Heard both sides.

2. The Petitioner/Appellant has filed the present Miscellaneous Petition praying for passing of an order by this Court to grant Leave to him, to prefer an Appeal as against the final order dated 20.04.2015 in W.P.No.11278 of 2015 passed by the Learned Single Judge.

3. According to the Learned Counsel for the Petitioner, the Petitioner was not a party to the W.P.No.11278 of 2015 (filed by the Respondents 1 and 2 as Writ Petitioners) and that they obtained an order for the properties possessed by him. Added further, the Respondents 1 and 2/Writ Petitioners had suppressed the pendency of suit, which if indicated in the affidavit of the Writ Petition would have

resulted in the dismissal of the Writ Petition. Apart from that, it is represented on behalf of the Petitioner that the pendency of the suit would act as a bar for the revenue authorities to decide on the issues before them and that the said authorities are to await for the outcome of the Civil Court's decision.

4. In effect, the substance of the stand taken on behalf of the Petitioner is that in a surreptitious manner, the Respondents 1 and 2 (Writ Petitioners) suppressing the suit and also the rival claim of the Petition, without arraying the Petitioner as a party, had obtained orders in W.P.No.11278 of 2015 dated 20.04.2015.

5. On behalf of the Petitioner, it is strenuously projected that the Petitioner was not made a party to the W.P.No.11278 of 2015 (filed by the Respondents 1 and 2 as Petitioners). The Petitioner is perforced to file the instant Miscellaneous Petition seeking Leave of this Court to prefer a Writ Appeal. Besides that, it is the plea of the Petitioner that the 3rd Respondent/Revenue Tahsildar, Attur Division, Attur, Salem District is constrained to take up the Petitioner's Application dated 03.02.2015, since the Learned Single Judge had issued a time bound direction in W.P.No.11278 of 2015 dated 20.04.2015.

6. The Learned Counsel for the Petitioner urges before this Court that the Petitioner/Appellant filed suit in O.S.No.335 of 2012 on the file of the District Munsif Court, Attur seeking a relief of declaration of title and consequential permanent injunction restraining the Defendants therein from interfering with the peaceful possession and enjoyment of the lands in question. As a matter of fact, the Respondents are the Defendants in the said suit. It comes to be known that the Petitioner/ Appellant filed I.A.No.1193 of 2012 praying for appointment of an Advocate Commissioner to visit the suit property, note down the physical features with the help of a Surveyor and to file a report. According to the Petitioner, the said Application was allowed by the trial Court and an Advocate Commissioner visited the properties and filed a report on 16.07.2013. Indeed, the physical features and boundaries of properties of respective parties has made mention of in the report would clearly confirm that the Petitioner/Appellant is in enjoyment and usage of the properties described in the Plaint schedule of the suit.

7. It is to be noted that in W.P.No.11278 of 2015 [filed by Respondents 1 and 2 (as Petitioners) against the Revenue Tahsildar, Attur Division, Attur, Salem District (as Respondent)], a relief was sought for passing of an order by this Court in directing the Respondent (Revenue Tahsildar, Attur Division, Attur, Salem District) to forthwith consider and pass orders on the Statutory Application of the Petitioners dated 03.02.2015 within a stipulated time.

8. At this stage, this Court very relevantly points out that in W.P.No.11278 of 2015 filed by the Respondents 1 and 2 (as Writ Petitioners), on 20.04.2015, this Court, at paragraph 4, had passed the following order and consequently, disposed of the Writ Petition.

4. This Court, taking into consideration the limited scope of the prayer sought for by the petitioners and without going into the merits of the application, directs the respondent to consider the application dated 03.02.2015 submitted by the petitioners, on merits and in accordance with law, after putting on notice the persons concerned, and pass orders as expeditiously as possible and not later than six weeks from the date of receipt of a copy of this order and communicate the decision to the petitioners as well as to the persons concerned. ?

9. Considering the fact that the Respondents 1 and 2 (as Petitioners) in W.P.No.11278 of 2015 had not whispered anything about the pendency of suit in O.S.No.335 of 2015 on the file of the trial Court filed by the Petitioner/Appellant etc., this Court is of the considered view that the Leave sought for by the Petitioner/Appellant in M.P.No.1 of 2015 is to be accorded, to prevent an aberration of Justice. Accordingly, this Court grants Leave to the Petitioner to file the Writ Appeal as against the final order dated 20.04.2015 in W.P.No.11278 of 2015 passed by the Learned Single Judge.

10. In fine, the M.P.No.1 of 2015 is allowed.

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