

1.M.Murugan Vs. M.Rajamohammed

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Court : Chennai

Decided On : Sep-08-2015

Judge : P.Devadass

Appellant : 1.M.Murugan

Respondent : M.Rajamohammed

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

08. 09.2015 CORAM THE HONOURABLE MR.JUSTICE P.DEVADASS
C.R.P(MD)No.1749 of 2015 and M.P(MD)No.1 of 2015 1.M.Murugan
2.M.Mughunthan .. Petitioners/Petitioners/ Petitioners/Appellants -vs-
M.Rajamohammed .. Respondent/Respondent/ Respondent/Respondent
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.309 of 2014 in I.A.No.251 of 2012 in C.M.A.No.24 of 2012, dated 06.04.2015 on the file of the learned Principal Sub Judge, Madurai. !For Petitioners : Mr.J.Ashok ^For Respondent : Mr.I.Muralitharan :

ORDER

1 Aggrieved as against the dismissal of his I.A.No.309 of 2014 filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 in C.M.A.No.24 of 2012 on the file of the learned Principal Sub Judge, Madurai, the defendants have directed this

Revision Petition.

2. The respondent/plaintiff instituted the suit in O.S.No.110 of 2011 in the Court of District Munsif, Vadipatti seeking injunction with respect to certain items of properties situate in Kallanai Village in Vadipatti North Taluk. The defendants have filed their written statement in the suit contending that they are cultivating tenants and they are also in possession and enjoyment of the properties.

3. Along with the suit, plaintiff filed I.A.No.191 of 2011 seeking interim injunction. The defendants have filed their counter and contested the petition.

4. The trial Court granted interim injunction.

5. In the circumstances, the defendants have filed C.M.A.No.24 of 2012 and that is pending before the learned Principal Sub Judge, Madurai as against grant of interim injunction in I.A.No.191 of 2011.

6. In the said C.M.A, the defendants have filed I.A.No.309 of 2014 under Order 41, Rule 27 of the Code of Civil Procedure, 1908 to permit him to let in additional evidence by examining the VAO, Kallanai and also sent for certain documents from the Tahsildar, Vadipatti and file a copy of the report in T.R.5/2009. The respondent/plaintiff filed counter.

7. The Appellate Court took up I.A.No.309 of 2014 and dismissed the I.A on the ground that it is not maintainable, Tahsildar could be examined before the trial Court and T.R.5/2009 also could be produced and thus, the petition is dismissed.

8. I have anxiously considered the rival submissions, perused the materials on record and the impugned order.

9. Order 41, Rule 27 of the Code of Civil Procedure, 1908 gives power to the Appellate Court to receive additional evidence, it may be oral and documentary, if it is necessary for taking just decision in the case. These type of I.As are used to be called 'Reception Petition'. The crux of the matter is, if the additional evidence is required for the Court to take a decision, it enable the Court to pronounce Judgment. But Order 41 Rule 27 of the Code of Civil Procedure, 1908 cannot be

limited to main appeals alone. It will apply to all kind of civil appeals including CMAs. Its requirement is based on the facts.

10. Whether additional evidence is required or not is to be decided upon hearing the appeals. Then only the need for the same should be known to the Court. Of course, there are exception to it. But it will be rare and it also depends on the facts and circumstances of the particular cases. Independent hearing of this kind in I.A is discouraged. Even if additional documents so received under Order 41, Rule 27 C.P.C., they must conform to the principle of proof and relevancy.

11. In an injunction suit, it is not 'mere possession', it must be 'legal possession'. In an application for interim injunction, the Court must consider the prima facie case, balance of convenience lies in whose favour, irreparable injury to whom, if injunction is not granted also have to be considered. Some times, what is required to be decided such (i) As may is what is required to be decided in the main suit or the decision in I.A may have its repercussion or effect in the main suit itself. When an appeal/C.M.A preferred as against such injunction order to next appellate and these consideration may crop up. There shall not be any enquiry within enquiry.

12. In this case, plaintiff says that he is in possession and enjoyment of the suit property. But defendants say they are in possession as cultivating tenants and got documents to that effect also. This is their contention in the I.A and C.M.A.

13. The Appellate Court is wrong in concluding that the I.A is not maintainable. It is maintainable. The opportunity to examine Tahsildar and file documents will not arise now, because till now the suit has not been put on trial.

14. In my view the view taken by the Appellate Court is that making the parties to concentrate on the suit itself is laudable, but the method adopted by the Appellate Court is not correct. So conclusion correct, steps taken is not correct.

15. Now, neither the C.M.A has progress nor the suit will have any progress, because the trial Court records are locked up in the Appellate Court and this stalemate will go on for a considerable period. In such circumstances, concentrating in the I.A, which will be a redoing in the C.M.A., will be like a

'conducting trial within a trial'. Therefore, in the facts and circumstances, I am of the view that the entire work can be given to the trial Court than the Appellate Court.

16. In the result, the learned District Munsif, Vadipatti is directed to dispose of the suit in O.S.No.110 of 2011 within a period of three months from the date of receipt of a copy of this order. The defendants are permitted to adduce the evidence which they have mentioned in I.A.No.309 of 2014 on their side subject to proof and relevancy at the appropriate stage of the suit. Consequently, the order passed in I.A.No.309 of 2014 is set aside. The Principal Sub Judge, Madurai is directed to send all the trial Court records received from the District Munsif, Vadipatti, immediately. It is made clear that the District Munsif, Vadipatti, will try the suit uninfluenced by the observations made in order in I.A.No.309 of 2014 by the Principal Sub Judge, Madurai. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, the learned Principal Sub Judge, Madurai will dispose of C.M.A.No.24 of 2012 accordingly and the trial of the suit itself is ordered to be taken up by the trial Court. Consequently, connected Miscellaneous Petition is also closed. To 1.The Principal District Judge, Madurai. 2.The Principal Sub Judge, Madurai. 3.The District Munsif, Vadipatti. Copy To:- The Registrar (Judicial), Madurai Bench of Madras High Court, Madurai..

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