

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2011

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

C.R.P. (PD) (MD) No. 943 of 2005

and

C.M.A. (MD) No. 498 of 2008

1. S. Rajagopal
2. A. Legemmal
3. Athilekshmi
4. Kasthuri
5. Senthil Pandi
6. Minor Rajapandi

(rep. By his mother and guardian
Kasthuri, 4th petitioner)

.. Revision Petitioners/Appellants

Versus

1. The Government of Tamil Nadu
thro' the District Collector,
Virudhunagar.

2. N.R. Thiagarajan

3. P. Pudupatti Panchayat

.. Respondents/Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and executable order dated 06.10.2003 made in I.A.No.133 of 2002 in A.S.No.18 of 2001 on the file of the Sub-Court, Aruppukottai.

C.M.A.No.948 of 2008:

1. S. Rajagopal
2. A. Legemmal (Died)
3. Athilekshmi
4. Kasthuri
5. Senthil Pandi
6. Minor Rajapandi

(Appellants 1, 3 to 6 are recorded as Lrs
of deceased 2nd appellant vide order of
Court dated 10.12.2008 made in M.P.No.1/08
in C.M.A(md) No.498/2008)

... Appellants 3 to 6
/Petitioners 4 to 7

Vs.

1. The Government of Tamil Nadu
thro' the District Collector,
Virudhunagar.

2.N.R.Thiagarajan

3.P.Pudupatti Panchayat

.. Respondents/Respondents

Prayer: Appeal filed under Order 43 Rule 1 of the Civil Procedure Code against the order of the learned Sub-Judge, Aruppukottai in I.A.No.62 of 2004 in A.S.No.18 of 2001 dated 19.07.2006.

For petitioner in C.R.P &
Appellants in C.M.A
For Respondent No.1 both in C.R.P
& C.M.A

: Mrs.Vijayakumari Natarajan

: Mr.D.Gandhi Raj
Addl.Govt.Pleader

For Respondent No.3 in C.R.P

: Mr.K.M.Vijayakumar

For Respondent No.2 in C.M.A

: No appearance

For Respondent No.3 in C.M.A.

: Mr.K.R.Krishna Dass

COMMON ORDER

This civil revision petition and civil miscellaneous appeal have been preferred against the orders passed in I.A.Nos.133 of 2002 and 62 of 2004 in A.S.No.18/2001 by the Sub-Court, Aruppukottai.

2.The revision petitioners herein as plaintiffs have instituted O.S.No.10 of 1993 on the file of the District Munsif Court, Aruppukottai for the reliefs of declaration and perpetual injunction, wherein, the present respondents have been shown as defendants. The trial court has dismissed the suit on 15.09.1993. The judgment and decree passed by the trial court have been agitated by way of filing A.S.No.18 of 2001. During pendency of the same, the revision petitioners as petitioners have filed I.A.No.133 of 2002 so as to get necessary permission to withdraw the plaint filed in O.S.No.10 of 1993 with liberty to file a fresh suit on the same cause of action and the same has been dismissed. Against the dismissal order passed in I.A.No.133 of 2002, C.R.P.No.943 of 2005 has been preferred on the file of this Court. In the meanwhile, A.S.No.18 of 2001 has been dismissed for default on 11.03.2004. In order to set aside the dismissal order, the revision petitioners as petitioners have filed I.A.No.62 of 2004 and the court below has dismissed the same. Against the dismissal order passed in I.A.No.62 of 2004, the present civil miscellaneous appeal No.498 of 2006 has been preferred.

3.Since common questions of law and facts are involved, common order is pronounced.

4.The learned counsel appearing for the revision petitioners has repeatedly contended that O.S.No.10 of 1993 has been instituted for the reliefs of declaration and perpetual injunction on the file of the District Munsif Court, Aruppukottai and the same has been dismissed erroneously and against the judgment and decree passed by the court below, A.S.No.18 of 2001 has been preferred and the trial

court has erroneously found that necessary pleadings are not available in the plaint with regard to vital documents filed on the side of the revision petitioners. Under the said circumstances, I.A.No.133 of 2002 has been filed so as to get necessary permission to file a fresh suit on the same cause of action. But the court below has dismissed the same. Against the dismissal order, C.R.P.No.493 of 2003 has been preferred on the file of this court and since I.A.No.133 of 2002 has been filed so as to withdraw O.S.No.10 of 1993 with liberty to file a fresh suit, the revision petitioners have failed to make their appearance in A.S.No.18 of 2001 and due to that, the same has been dismissed on 11.03.2004 and in order to set aside the dismissal order, I.A.No.62 of 2004 has been filed. But the court below has erroneously dismissed the same. Against the dismissal order, C.M.A.No.498 of 2008 has been filed. Under the said circumstances, both the orders of the court below are liable to be set aside.

5.The learned counsel appearing for the contesting respondents has also equally contended that at the appellate stage, the petition in I.A.No.133 of 2002 cannot be filed for the relief sought therein and the court below has rightly dismissed the same. Further, no sufficient reason has been given in I.A.No.62 of 2004 so as to set aside the dismissal order passed in A.S.No.18 of 2001 and therefore, both the orders passed by the courts below are perfectly correct and the same do not warrant interference.

6.It is an admitted fact that O.S.No.10 of 1993 has been instituted for the reliefs of declaration and perpetual injunction and the same has been dismissed on 15.09.1993. Against the judgment and decree passed by the trial court, A.S.No.18 of 2001 has been preferred on the file of the court below. During pendency of the same, I.A.No.133 of 2002 has been filed so as to get permission to withdraw O.S.No.10 of 1993 with liberty to file a fresh suit on the same cause of action. But the court below has dismissed the same.

7.It is an everlasting principle of law that at appellate stage, the relief sought for in I.A.No.133 of 2002 cannot be granted. Considering the fact that during appellate stage, the relief sought for in I.A.No.133 of 2002 cannot be granted, it is needless to say that the order passed by the court below in I.A.No.133 of 2002 is perfectly correct and the same does not require any interference and altogether C.R.P.No.943 of 2005 is liable to be dismissed.

8.Now, the court has to look into the order passed in I.A.No.62 of 2004. I.A.No.62 of 2004 has been filed so as to set aside the dismissal order dated 11.03.2004 passed in A.S.No.18 of 2001. In I.A.No.62 of 2004, it has been stated that since I.A.No.133 of 2002 has been filed so as to get necessary permission to withdraw O.S.No.10/1993 with liberty to file a fresh suit on the same cause of action, the revision petitioners have failed to make their appearance in A.S.No.18 of 2001. Since I.A.No.133 of 2002 has been filed on the side of the revision petitioners in the year 2002, the reason given

in I.A.No.62 of 2004 can be considered as genuine and the court below has erroneously dismissed I.A.No.62 of 2004 and therefore the order passed by the court below in I.A.No.62 of 2004 is liable to be set aside and C.M.A.No.498 of 2008 is liable to be allowed. Further, it is made clear that the revision petitioners can advance arguments in A.S.No.18 of 2001 with regard to documents filed on their side.

9. In fine, civil revision petition No.943 of 2005 deserves to be dismissed and accordingly is dismissed without costs. Consequently, connected C.M.P.No.7164 of 2005 in C.R.P.No.943 of 2005 is also dismissed and civil miscellaneous appeal No.498 of 2008 is allowed without costs and the order passed in I.A.No.62 of 2004 in A.S.No.18 of 2001 by the Sub-Court, Aruppukottai is set aside and the petition filed in I.A.No.62 of 2004 is allowed without costs.

The Sub-Court, Aruppukottai is directed to dispose of A.S.No.18 of 2001 before the end of March 2011 and report the same to the Registry without fail.

Sd/-
Deputy Registrar(LA)

/True Copy/

J. N. M. 7/3/11
Assistant Registrar

To

The Subordinate Judge,
Aruppukottai.

Copy to : The Section Officer, Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+2cc to Mr. S. Natarejan, Advocate SR.Nos.3673 & 3674
+1cc to Mr. K.M. Vijayakumar, Advocate SR.No.3703

Vs

akm/24.02.11 /4p-6c/

C.R.P. (PD) (MD) No. 943 of 2005
and
C.M.A. (MD) No. 498 of 2008