

Reserved on : 09.07.2015

Delivered on : 23.07.2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(PD).No.2075 of 2015
and M.P.No.1 of 2015

M.B.Venkatarathinam @ Babu

... Petitioner

Vs.

Citty Vijayalakshmi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed in C.M.A.No.97 of 2014 dated 05.11.2014 on the file of the II Additional City Civil Court, Chennai reversing the order in I.A.No.1016 of 2014 in O.S.No.381 of 2014 on the file of the V Assistant Judge, City Civil Court, Chennai, dated 22.04.2014 granting injunction in favour of the petitioner against the respondent.

For Petitioner : Mr.K.S.V.Prasad

For Respondent : Mr.Ravindran

ORDER

Challenging the judgment and decree passed in C.M.A.No.97 of 2014 on the file of the II Additional Judge, City Civil Court, Chennai reversing the fair and decreetal order passed in I.A.No.1016 of 2014 in O.S.No.381 of 2014 on the file of the V Assistant Judge, City Civil Court, Chennai, the plaintiff in O.S.No.381 of 2014 has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.381 of 2014 for permanent injunction. The plaintiff is the brother of the defendant.

3.According to the plaintiff, his father settled the suit property in his favour by way of registered Settlement Deed dated 14.02.2013. Since the defendant and her family members restricted the entry of the plaintiff high handedly, he sent a legal notice on 24.08.2013 seeking to vacate and hand over vacant possession of the ground floor of the suit or pay the monthly rent to the ground floor of the property. When the plaintiff entered the suit property for carrying out some repairs and white wash in the first floor of the 'B' Schedule property, the defendant and her men threatened the plaintiff with dire consequences. Therefore, the plaintiff lodged a police complaint on 31.12.2013. Along with the suit, he filed an application in

I.A.No.1016 of 2014 under Order 39 Rule 1 & 2 of the Civil Procedure Code seeking for interim injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the 'B' Schedule property (i.e.) the first floor of the property. The defendant filed her counter wherein she has stated that she had filed a suit in O.S.No.5617 of 2013 on the file of the XIV Assistant Judge, City Civil Court, Chennai for permanent injunction in respect of the suit property against her father. The trial Court, after taking into consideration the case of both parties, allowed the application in I.A.No.1016 of 2014. Aggrieved over the same, the defendant preferred preferred an appeal in C.M.A.No.97 of 2014 and the Lower Appellate Court set aside the fair and decreetal order passed in I.A.No.1016 of 2014 in O.S.No.381 of 2014 and allowed the appeal. Aggrieved over the same, the plaintiff has filed the above Civil Revision Petition.

4.The learned counsel for the petitioner submitted that the trial Court had erroneously set aside the fair and decreetal order passed in I.A.No.1016 of 2014, when the plaintiff had established that he is in possession of the first floor of the property. The learned counsel also submitted that the Lower Appellate Court has not considered the documents produced by the parties while allowing the appeal.

5. The learned counsel for the petitioner, in support of his contention, relied upon the following judgments:

(i) ***AIR 1974 Madras 87 [Vadivel Mudaliar and another Vs. Pachianna Gounder]*** wherein this Court held that at least prima facie discussion of documents and affidavits filed is a must and mere reference would vitiate the order.

(ii) ***2010 (1) MWN (Civil) 524 [Sampoornam and 8 others Vs. Annachi Ammal and 5 others]*** wherein this Court held that in a suit for bare injunction, the Court need not look into the details of the title and prima facie proof of title would suffice.

(iii) ***AIR 1998 Supreme Court 1188 [K.Urmila and others Vs. Ram Kumar Verma]*** wherein the Apex Court held that the Revisional Court ought to consider and discuss evidence on which finding was based by lower Authorities.

(iv) ***AIR (39) 1952 Supreme Court 47 [Kedar Lal Seal and another Vs. Hari Lal Seal]*** wherein the Hon'ble Supreme Court held that the Court would be slow to throw out a claim on a mere technicality of pleading when

the substance of the thing is there and no prejudice is cause to the other side, however clumsily or inartistically the plaint may be worded.

In the case on hand, the Lower Appellate Court found that the possession is also admittedly with the respondent and that there is dispute with regard to the title of the property.

6. On a perusal of the plaint, in the cause of action paragraph, the plaintiff has averred that on 14.12.2013, he informed the defendant to vacate and hand over vacant possession of the suit property to him and when the defendant failed to hand over possession of the suit property to him, on 24.08.2013 he issued a legal notice to her and that in spite of the legal notice, she did not hand over possession of the suit property. The suit 'A' Schedule property is the property consisting of ground and first floor and suit 'B' Schedule property is the first floor property. The plaintiff has filed the suit in respect of the 'B' Schedule property alone.

7. According to the learned counsel for the petitioner/plaintiff, the defendant is in possession of the ground floor of the 'A' Schedule property. The learned counsel submitted that the first floor is in possession of the

plaintiff. However, the averment stated in the cause of action paragraph is against the contention raised by the learned counsel for the petitioner.

8. When the plaintiff himself has stated that he informed the defendant to vacate and hand over vacant possession of the suit property to him and that she failed to hand over possession of the suit property would show that the plaintiff is not in possession of the suit property.

9. The learned counsel for the petitioner submitted that by mistake the averment has been wrongly stated in the cause of action paragraph.

10. Until it is proved that the averment in the cause of action paragraph has been wrongly stated, the said averment will hold good. In the case on hand, the defendant is disputing the title of the plaintiff. That apart, before the trial Court, the plaintiff has not established his possession over the suit property by producing documents in support of his possession.

11. The learned counsel for the petitioner submitted that the trial Court had omitted to mention the list of documents in the order and that the Lower Appellate Court should have mentioned the list of documents in the order passed in C.M.A.No.97 of 2014.

12.The contention raised by the learned counsel for the petitioner cannot stand for the reason that unless additional documents are filed before the Lower Appellate Court, the documents filed before the trial Court will not be mentioned as list of documents. But the mistake was committed by the trial Court by not mentioning the list of documents in the order passed in I.A.No.1016 of 2014. In spite of the same, the plaintiff had succeeded before the trial Court, therefore, now he cannot contend that the trial Court had committed an error, therefore, the order passed by the Lower Appellate Court should be set aside. In any event, both the Courts have taken into consideration the documents filed by the plaintiff and passed the order.

13.If the contention of the learned counsel for the petitioner is accepted, then, firstly, the order passed by the trial Court has to be set aside, for which the learned counsel for the petitioner is not agreeable. In the absence of any evidence produced before the Courts below with regard to the possession of the plaintiff, an order of injunction cannot be granted in his favour. That apart, the Lower Appellate Court also found that the issue involved in the matter can be decided only after the trial of the suit.

14. In the case on hand, the trial Court allowed the application on 22.04.2014 and the Lower Appellate Court reversed the fair and decreetal order passed in I.A.No.1016 of 2014 and dismissed the application on 05.11.2014. However, the Civil Revision Petition was filed by the plaintiff before this Court only on 13.04.2015 and the matter was listed for admission on 05.06.2015. Till this date, this Court has not granted any interim order in favour of the plaintiff. Therefore, it is clear that from 05.11.2014 till today, there is no interim order granted in favour of the revision petitioner/plaintiff.

15. Since the issue involved in the present suit can be decided only after the trial of the suit, I am not inclined to interfere with the judgment and decree passed in C.M.A.No.97 of 2014. Though there is no dispute with regard to the ratios laid down in the judgments relied on by the learned counsel for the petitioner, since the facts and circumstances differs, the said judgments are not applicable to the present case. In these circumstances, the Civil Revision Petition is devoid of merits and is liable to be dismissed.

16.The learned counsel on either side submitted that the suit is ripe for trial.

17.Therefore, I direct the V Assistant Judge, City Civil Court, Chennai to dispose of the suit in O.S.No.381 of 2014, on merits and in accordance with law, un-influenced by any of the observation given in this Civil Revision Petition, within three months from the date of receipt of a copy of this order.

18.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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23.07.2015

To

1.The II Additional City Civil Court,
Chennai.

2.The V Assistant Judge,
City Civil Court,
Chennai.

M.DURAIWAMY,J.
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Order made in
C.R.P.(PD).No.2075 of 2015
and M.P.No.1 of 2015

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