

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

CRP(PD)No.2156 of 2004 and C.M.P.No.20718 of 2004

1. P.Elumalai
2. P.Thirumalai @ Sekar .. Petitioners/Defendants 1&2

Vs.

S.Rajendran .. Respondent/Plaintiff

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 22.11.2004 made in I.A.No.3221 of 2004 in O.S.No.1083 of 2004 on the file of the learned District Munsif, Poonamallee.

For the Revision Petitioner : Mr.G.K.R.Pandiyan

ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.3221 of 2004 in O.S.No.1083 of 2004 on the file of District Munsif Court, Poonamallee.

2. The defendants 1 & 2 in O.S.No.1083 of 2004 on the file of District Munsif Court, Poonamallee are the revision petitioners. The respondent instituted the above said suit in O.S.No.1083 of 2004 against the revision petitioners seeking for permanent injunction restraining the defendants 1 and 2 from dispossessing the plaintiff from the suit property by force and violence. The respondent also filed an Interlocutory Application in I.A.No.3221 of 2004 seeking ad-interim injunction under Order 39 Rules 1 & 2 of C.P.C. The Trial Court granted interim injunction on 22.11.2004. Aggrieved by the interim order of the Trial Court, the present Civil Revision Petition is filed.

3. Heard the learned counsel for the petitioners and perused the records.

4. Mr.G.K.R.Pandian, learned counsel appearing for the petitioners submitted that the respondent has filed the suit on a frivolous grounds and the respondent has not produced any documents to prove possession of the suit property and that the respondent/plaintiff has not established the prima facie case. Hence, the Trial Court ought not to have granted ad interim

injunction. It is further contended that the Trial Court has not assigned any reason for granting ad interim injunction in favour of the respondent.

5. It is seen that the Trial Court has granted ad interim injunction holding as under:-

" Heard. Records perused. Prima facie case is made out and the balance of convenience is in favour of petitioner / plaintiff. Ad interim injunction granted till 15.12.2004. Order 39 Rule 3(a) CPC to be complied with. Notice to respondent by then"

6. The trial court, without considering the facts of the case and without assigning any reason has passed the impugned order. In this regard, it is useful to refer the following judgment. In 2002 (1) CTC 458 in re (Rt Rev Dr. V. Devasahyam, Bishop in Madras CSI and another Vs D. Sahayadoss and 2 Others), this Court has held as follows:-

" 8. It is clear from Rule 3 that whenever the Court intends to grant ex parte injunction without notice to the opposite part, the Court shall record its reason/reasons for its opinion that the object of granting the injunction would be defeated by the delay and also require the applicant to fulfil the conditions stipulated in Clause (a) and (b) therein. Though the learned Subordinate Judge has stated that he heard the arguments of the petitioners' side, perused the records and found that a prima facie case is made out in favour of the petitioners, first of all there is no question of perusing the records in the absence of any documents filed either along with the plaint or with the injunction application. The mere statement that 'there is a prima facie made out' would not be sufficient for strict compliance of Rule 3. As a matter of fact, the courts have taken a view that apart from arriving at a conclusion that a prima facie case is made out, in certain matters, the court has to satisfy the maintainability of the suit etc. It is to be noted that grant of injunction is an extraordinary power vested in the Court to be exercised taking into consideration the facts and circumstances of a particular case. The Courts have to be more cautious that when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in all cases the court shall, before grant of an injunction, direct notice

of the application to be given to the opposite party, except where it appears that object of granting injunction itself would be defeated by delay. By the Civil Procedure Code (Amendment) Act, 1976, a proviso has been added to the said rule saying that "where it is proposed to grant an injunction without giving notice of the application to the opposite-party, the court shall record the reasons for its opinion that, the object of granting the injunction would be defeated by delay. In view of the Proviso to Rule 3 aforesaid, I hold that without recording the reasons, the grant of ad-interim injunction cannot be sustained. When the statute itself requires reasons to be recorded, the Court cannot ignore the requirements. Further, the condition so introduced is that the court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of *Toylor v. Taylor*, 1875 (1) Ch D 426: 45 LJ Ch 373 and *Nazir Ahmed v. Emperor*, AIR 1936 PC 253 (2). To make it clear that whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. It is also relevant

to note the Constitutional Bench decision of the Apex Court in Mohinder Singh Gill v. Chief Election Commissioner, , wherein Their Lordships have held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the light of the specific provision, namely, Proviso to Rule 3, in the absence of recording reasons for granting ad-interim injunction even before notice to the opposite party, I hold that the impugned order of the learned Subordinate Judge dated 29.11.2001 is liable to be interfered. "

7. Yet again, in the judgment reported in (2009) 7 MLJ 304 in re (Irin Stephan and others Vs. J.Musafargani, Chennai), this Court has held as follows:-

" 11. From the above, it is very clear that if the trial court has decided to grant an ex-parte Order of injunction, it shall record the reasons for doing so and Rule 3 of Order 39 C.P.C. is a mandatory provision and that should be strictly complied with by all the courts. Time and again, this Court sends instructions to the subordinate Courts to comply with Rule 3 of Order 39 C.P.C., but, I am coming across a number of ad-interim injunction orders passed by the subordinate Courts, which are certainly in violation of the mandatory provision of C.P.C. and also the circular of instructions issued by this Court to those Subordinate Courts. Hence, I have no hesitation in coming to the conclusion that the order challenged in this Civil revision petition is certainly not in consonance with Order 39 Rule 3 C.P.C. and therefore, the same is to be interfered with by this Court. "

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8. In the light of the above decisions, the impugned order cannot be sustained and the same is set aside. In fine, the Revision Petition stands allowed. Consequently connected the Miscellaneous Petition is closed. The Trial Court shall consider the interlocutory application on merits, after giving opportunity to both the parties and pass orders within a period of six weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

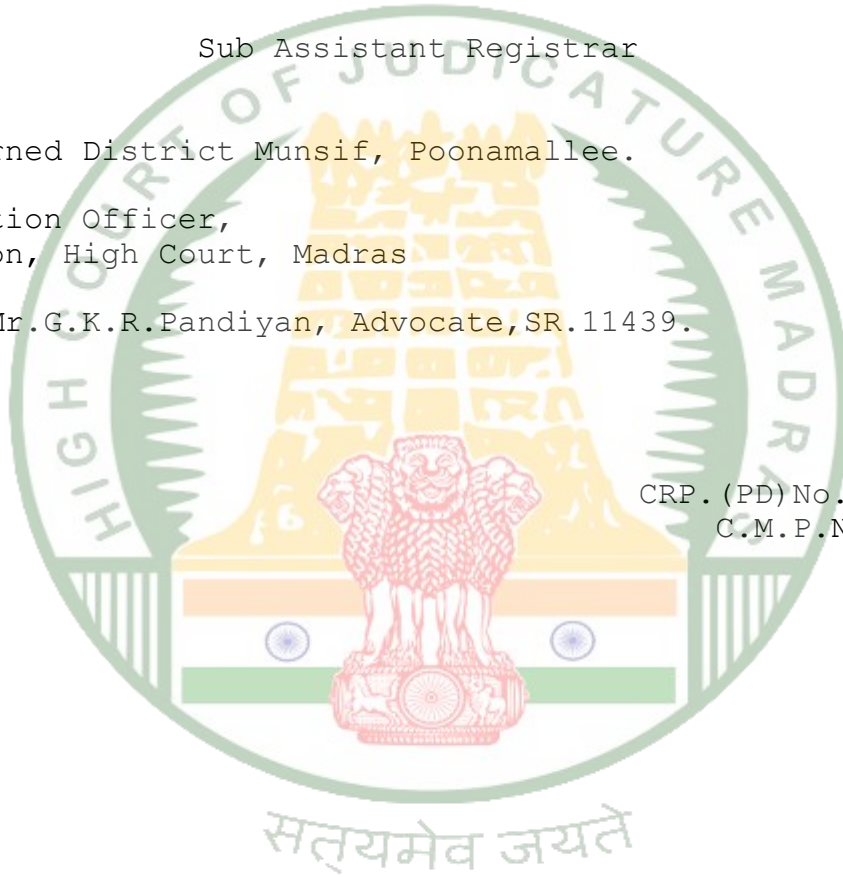
1.The learned District Munsif, Poonamallee.

2.The Section Officer,
V.R.Section, High Court, Madras

+1 cc to Mr.G.K.R.Pandiyar, Advocate,SR.11439.

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krd 28/4

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