

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.1037 of 2016

R.Manoharan

... Petitioner

Vs

N.Niraiselvi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 22.12.2015 made in I.A.No1696 of 2014 in O.S.No.400 of 2016 passed by the learned Additional District Munsif, Alandur.

For Petitioner : Mr.M.Kamalanathan
for Mr.S.Thirusaravanan

For Respondent : Mr.B.Damodaran

ORDER

This Civil Revision Petition under Article 227 of the Constitution of India has been filed challenging the legality of the order of the trial Court, namely the Court of the Additional District Munsif, Alandur dated 22.12.2015 made in I.A.No.1696 of 2014 in O.S.No.400 of 2006 on the file of the said Court.

2. The above said suit was filed by the respondent herein against the petitioner herein for an injunction not to alienate or encumber of the suit property and a further injunction not to interfere with the peaceful possession and enjoyment of the respondent herein/plaintiff in respect of the suit property. Though the suit came to be filed in the year 2006, the defendant, namely the petitioner in the revision petition, filed an application in I.A.No.1696 of 2014 after 8 years for the rejection of the plaint under Order VII Rule 11 CPC.

3. The ground on which the revision petitioner sought rejection of plaint is that the plaint averments do not reveal any cause of action for the suit. The learned trial Judge, after hearing both sides, came to the conclusion that the contention of the revision petitioner/defendant could not be sustained and the said application was dismissed by the trial Court by the above said order impugned in this revision. The Civil Revision Petition stands listed today for admission.

4. The arguments advanced by Mr.M.Kamalanathan, learned counsel appearing on behalf of Mr.S.Thiru Saravanan, learned counsel on record for the petitioner are heard. Certified copy of the impugned order, grounds of revision and copies of other documents produced in the form of typed-set of papers are also perused.

5. It is the contention of the learned counsel for the revision petitioner that the respondent/plaintiff has not produced any document to show that the suit property is in her possession and on the other hand, there are averments in the plaint which go to show that the possession is with the revision petitioner/defendant and that hence, the cause of action for suing for injunction not to disturb the alleged peaceful possession and enjoyment of the plaintiff in respect of the suit property is non-existent.

6. This Court, after perusing the copy of the plaint included in the typed-set of papers, finds it difficult to accept the above said contention of the learned counsel for the petitioner in the revision. In paragraph 9 of the plaint, the respondent/plaintiff has made it clear that once the revision petitioner trespassed into the property and put up a sign board, but the same was subsequently demolished and that thereafter, the revision petitioner/defendant with the help of rowdy elements armed with dangerous weapons, tried to trespass into the suit property and occupied the property illegally. Though the language used therein is not a refined language, the plain meaning of the averment is that she is in possession and the defendant (petitioner in the revision) made attempts to trespass into the property forcibly, occupied the property, which was prevented by her. Further averment found in Paragraph 12 and 13 of the plaint also will make it clear that the plaintiff's averment is to the effect that she is in possession and

the defendant, who is the petitioner in the revision, was making attempts to disturb her possession.

7. In the cause of action column, namely Paragraph 14, the various dates on which the police complaints were given have been referred to as the dates on which the cause of action arose. That will also show that the plaintiff's case is that she is in possession and attempts were made by the defendants, who is the petitioner in the revision to trespass into the property. A plaint cannot be rejected based on the averments that may be made in the affidavit filed in support of an application filed under Order VII Rule 11 CPC or based on the documents produced by the defendant. On the other hand, when a plea is made that the plaint should be rejected on the premise that the plaint averments do not disclose a cause of action, only the plaint shall be looked into and not the written statement or other documents produced by the defendant. The cause of action is a bundle of facts and it is not necessary that it must be stated in a particular form or in other words in golden words. If the averments, in general, makes it clear that there is a cause of action, that itself shall be enough and the plaint cannot be rejected on the ground that the plaint averments do not disclose a cause of action. The above said observations are made so far as the second prayer for injunction, namely injunction not to disturb the peaceful possession and enjoyment of the plaintiff in respect of the suit property.

8. So far as the first prayer, an injunction not to alienate or encumber is concerned, clear averments have been made in the plaint that she is entitled to the property and the revision petitioner /defendant is making attempt to create documents. Hence, it cannot be said that for the first prayer there is no cause of action. Even if it is assumed for the sake of argument that the cause of action for the first prayer may not be sufficient, one cannot say that there is no cause of action for the first prayer. Hence, the prayer for rejection of plaint is bound to be rejected as untenable. That is what the Court below has done. Hence, this Court does not find any scope for interfering with the order of the trial Court in exercise of this Court's power of superintendence over the subordinate Courts under Article 227 of the Constitution of India. The revision deserves dismissal at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs.

31.03.2016

Index: Yes/No

Internet: Yes/No

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To

The Additional District Munsif Court, Alandur.

P.R.SHIVAKUMAR, J

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