

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.08.2016

PRONOUNCED ON: 22.12.2016

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.1993 of 2013

and

M.P.No.1 of 2013

1.Selina Precilla

2.S.David

... Petitioners

Vs.

1.N.Chandrasekaran

2.B.Percy Jabaraj

... Respondents

(2nd Respondent given up)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the petition and order dated 18.04.2013 and made in I.A.No.3084 of 2013 in I.A.No.149 of 2013 in O.S.No.76 of 2013, on the file of the XV Assistant Judge, City Civil Court at Chennai.

For Petitioners : Mr.V.Perumal

For Respondents : Mr.Durai Kannan (for R1)

R2 – Given up

ORDER

The 3rd parties in the suit in O.S.No.76 of 2013, on the file of the XV Assistant Judge, City Civil Court, Chennai have filed the Civil Revision Petition, challenging the order in I.A.No.3084 of 2013 dated 18.04.2013.

2.The plaintiff in the suit in O.S.No.76 of 2013 has filed an application in I.A.No.3084 of 2013 in I.A.No.149 of 2013 in O.S.No.76 of 2013 seeking prayer before the learned XV Assistant Judge, City Civil Court, Chennai for appointment of Advocate Commissioner to list down in detail the assets, equipments, materials that are lying in front of the shop belonging to the petitioner inclusive and not restricted to the conditions, status of the same and take photographs and file a report into the Court.

3.The case of the plaintiff is that the plaintiff has sought for interim injunction in I.A.No.149 of 2013 in O.S.No.76 of 2013 restraining the defendant, from disturbing the peaceful possession and enjoyment of the plaintiff in the suit schedule property in any manner and to evict the plaintiff from the suit schedule property without due process of law. Considering his case for the suit, the learned XV Assistant Judge, by order dated 03.01.2013 in I.A.No.149

of 2013 for the order of interim injunction and directed notice in the said application to the respondents/ defendants.

4.The plaintiff also states that the first defendant is residing in the suit property and he had given no objection to run his tea shop and for availing license from the statutory authorities. The electricity demand card and all other taxes till date reveal the assessee as first defendant and in the meantime, since consciously, willfully and wantonly and with ulterior motive with malafide intentions to make an illegal gain and in violation of the order and with a clear intention to flout and circumvent the same, they had removed his goods from the property. Hence, the plaintiff is entitled to get possession restored and therefore he has filed the above application in I.A.No.3084 of 2013 for appointment of Advocate Commissioner for the above purpose. He has also states that there was no prejudice and loss would be caused to the respondents, if the above relief is not granted and it is in the interest of justice and the parties concerned, an Advocate Commissioner be appointed as prayed for.

5.The counter affidavit filed by the petitioner to support of the above petition to appointment of an Advocate Commissioner to punish the respondent, restoration of possession and for

compensation of the petitioner. The averment made by the petitioner/plaintiff is not correct, they are all not at all maintainable. Further states that the counter filed by the respondent, who is the defendant only the third parties, the petitioner itself not maintainable since they are not the party in the above suit and the injunction petition and also the petitioner/plaintiff has entered rental agreement between the 2nd defendant on 25.10.2010 and his wife also witness in the rental agreement. The counter filed by the third party also states that if the plaintiff wants to receive the compensation for loss and damage he should file separate suit and the petitioner is entitled for maintainable before the Court. They also states that the first respondent, who is the third party, he is brother of the 2nd respondent and executed the settlement deed in favour of his mother on 29.06.2004 and his mother executed the settlement in favour of the 2nd respondent on 27.07.2004, the third respondent / third party, who is the husband of the 2nd respondent. The respondent also states that the petitioner has paid the rent only from 2004 to 2010 to the respondents 2 and 3/third parties. The petitioner has closed the tea shop and done some illegal business. Therefore, the plaintiff has not made out any case before the Court. Therefore, he sought for the dismissal of the application.

6.It is admitted fact that there was an order of injunction granted in I.A.No.149 of 2013 by the learned XV Assistant Judge, City Civil Court, but after passing the order, it is stated that the respondents were dispossessed the plaintiff and put his articles outside the suit premises in the road. To note down the articles which are thrown away by the respondent an Advocate Commissioner should be appointed.

7.In this case of the respondents/third parties, they have filed an application in I.A.No.5615 for rejecting the plaint and the same is pending. Therefore, the respondents/third parties sought for the Court that the said application was taken up first and then only other orders can be passed by the Court in I.A.No.5615.

8.In support of the case, the respondents/3rd parties were also produced a judgment rendered in ***The Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniammal Educational Trust*** reported in ***2012 (4) CTC 308*** and in the judgment, which is held that where the plaint did not show cause of action, it should be rejected.

9. Admittedly, the trial Court namely the XV Assistant Judge, City Civil Court, Chennai was pleased to grant an order of interim injunction in I.A.No.149 of 2013 and for disobeyed by the respondent and hence the plaintiff has filed an application in I.A.No.3085 of 2013 for contempt and the petitioner has also filed I.A.No.3088 of 2013 for payment of compensation. The plaintiff also argued that unless the respondent is relieved from the contempt action, he cannot be allowed to contest the suit.

10. The plaintiff also relied on a judgment in the case of ***Dr.Madan Gopal Gupta Vs. The Agra University and others*** reported in ***AIR 1974 Allahabad 39***, wherein the Allahabad High Court held that "a party in contempt in the same cause until that party has purged the contempt." The plaintiff has also produced one another judgment in the case of ***S.S.Roy Vs. Damodar Valley Corporation and others*** reported in ***AIR 1974 Calcutta Page No.69***, it is held that "if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed". Considering both sides, the learned

XV Assistant Judge, was pleased to allow the application filed by the plaintiff in I.A.No.3084 of 2013 and appointing one Mr.P.Saravanan, Advocate, No.257, New Additional Law Chamber, High Court Buildings, Chennai-600 104, to note down the physical features of the suit property and to note down the articles lying outside the suit property in the road and to take photos and to file report on or before 26.04.2013. Challenging the said order, this petitioners/third parties have filed this civil revision petition.

11.Heard Mr.V.Perumal, learned counsel appearing for the petitioner and Mr.Duraikannan, learned counsel appearing for the first respondent.

12.Admittedly, the learned XV Assistant Judge, City Civil Court, Chennai has passed order in I.A.No.149 of 2013, after passing the order, this petitioners/the third parties in the suit were thrown away the articles lying in the shop to the road and now the same is lying in the road. Therefore, the plaintiff was filed I.A.No.3085 of 2013 filed against the third parties for disobedience of the orders passed in I.A.No.149 of 2013 and also I.A.No.3085 of 2013 for payment of cost by the petitioners/ third parties, in the interest of justice, it is just and necessary, the learned Judge has considered the case of the

plaintiffs and ordered the appointment of Advocate Commissioner.

13.This Court and the Hon'ble Apex Court has categorically held that when the above proceedings to be decided and also in the compensation for loss and damages caused by the parties and only the Advocate Commissioner appointed to note down the physical features of the suit property. Therefore, the order passed by the learned Judge in I.A.No.3084 of 2013 in I.A.No.149 of 2013 in O.S.No.76 of 2013 dated 18.04.2013 is well considered order and there is no warranting interference by this Court for quashing of the said order and hence, this civil revision petition is liable to be dismissed.

14.In the result:

(a)the civil revision petition is dismissed, confirming the order in I.A.No.3084 of 2013 in I.A.No.149 of 2013 in O.S.No.76 of 2013, on the file of the learned XV Assistant Court, City Civil Court, Chennai.

(b)the learned Advocate Commissioner, namely Mr.P.Saravanan, Advocate, No.257, New Additional Law Chamber, High Court Buildings, Chennai-600 104, is

hereby directed to inspect the properties as per the order passed by the learned Judge in I.A.No.3084 of 2013 in I.A.No.149 of 2013 in O.S.No.76 of 2013, dated 18.04.2013 and file a report within a period of one month.

(c)thereafter, the trial Court namely the XV Assistant Court, City Civil Court, Chennai is hereby directed to dispose the suit in O.S.No.76 of 2013, within a period of four months thereafter, on day today basis without giving any adjournments to either parties. Both the parties are hereby directed to co-operate for early disposal of the suit.

15.Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2016

vs

Internet:Yes.

Index:Yes.

To

The XV Assistant Judge,

City Civil Court, Chennai.

M.V.MURALIDARAN,J.

VS

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