

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.435 of 2016

&

C.M.P.No.2254 of 2016

Minor Kameswaran
Represented by next friend/Guardian
(Mother Lakshmi)
Soolankurichi Village
Sankarapuram Taluk
Villupuram District

... Petitioner

vs.

1.R.Selvi
2.Kuppammal

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order passed by the Hon'ble Subordinate Court, Kallakurichi in I.A.No.19 of 2014 in C.M.A.No.04 of 2014 dated 05.01.2016.

For Petitioner : Ms.G.V.Seethalekshmi

For Respondents : Mr.R.Kumaravel`

ORDER

The petitioner is represented by Ms.G.V.Seethalekshmi, learned counsel for the petitioner. The first respondent, the order passed in whose favour is challenged in the revision, has entered appearance through counsel and he has lodged a caveat. He has been given notice and the counsel is also present.

2. The arguments advanced on both sides are heard and an attempt is made at the disposal of the Civil Revision at the first hearing itself.

3. The plaintiff in the original suit is the petitioner in the present revision. He is a minor represented by his next friend and mother Lakshmi. The petitioner filed the original suit O.S.No.172 of 2013 on the file of District Munsif, Sankarapuram for declaration of his title to the suit property and for a permanent injunction not to disturb his peaceful possession and enjoyment of the suit property. Along with the suit, the petitioner filed an interlocutory application in I.A.No.423 of 2013 seeking interim injunction pending disposal of the suit. The learned trial Judge granted *ex parte* ad-interim injunction and during the course of enquiry in the application, temporary injunction was continued from time to time. At last, after a detailed enquiry to find out whether the petitioner did have a *prima facie* case and in whose favour balance of convenience would lie, the learned trial judge passed an order

allowing the said application on 12.08.2014 making the injunction absolute till the disposal of the suit.

4. As against the said order of the learned trial Judge, the first respondent herein preferred a Civil Miscellaneous Appeal in C.M.A.No.4 of 2014 on the file of the Sub-Court, Kallakurichi (the lower appellate Court). In the said Civil Miscellaneous Appeal, the first respondent herein sought an order of stay of the operation of the order of the trial Court dated 12.08.2014 made in I.A.No.423 of 2013 in O.S.No.172 of 2013. On the date of admission itself, the learned lower appellate Judge granted interim stay and it went on extending the order of interim stay for several hearings. In the course of hearing of the application for stay, the learned lower appellate Judge also chose to appoint a Commissioner to harvest the sugarcane crops that had been raised in the suit property. At last after several adjournments, by a non-speaking order, which can be even stated to be crippled one, the learned lower appellate judge has chosen to allow the said application I.A.No.19 of 2014 in C.M.A.No.4 of 2014 and make the stay absolute pending disposal of the Civil Miscellaneous Appeal. Nothing is reflected in the order of the lower appellate Court to show as to who among the parties was in actual possession of the property and who cultivated the property in order to arrive at a conclusion as to whether the finding of the trial Court regarding the prima facie case being in favour of the revision petitioner could be sustained or not. The lower appellate Court had also not adverted to the question of

balance of convenience. It simply proceeded on the assumption that when an appeal is filed against an order in the interlocutory application, grant of stay is automatic and when interim stay is granted making the stay absolute is till the disposal of the Civil Miscellaneous Appeal is inevitable.

5. The contention of the first respondent is that it is the revision petitioner, who alone cultivates the land through his next friend. Under the said circumstances, the learned lower appellate Judge ought not to have spent much of the time in hearing the stay application. It ought to have left the interim injunction granted by the trial Court untouched and proceeded with the disposal of the Civil Miscellaneous Appeal. Strong reasons are needed for interfering with the order of interim injunction granted by the trial Court, that too, when grant of stay will cause a break in the protection given to the plaintiff, which he was enjoying till the disposal of the interlocutory application.

6. Considering the all the above aspects, this Court comes to the conclusion that the Civil Revision Petition can be disposed of at the stage of admission itself and that such a disposal shall result in the Civil Revision Petition being allowed and the impugned order of the lower appellate Court being set aside by this Court.

In the result, the Civil Revision Petition is allowed and the impugned order of the lower appellate Court dated 05.01.2016 made in I.A.No.19 of 2014 in C.M.A.No.04 of 2014 is set aside. The lower appellate Court is directed to take up the Civil Miscellaneous Appeal itself and dispose of the same within four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

15.02.2016

Index: Yes/No
Internet: yes/No
gpa

To

The Subordinate Court, Kallakurichi

P.R.SHIVAKUMAR.J.,

gpa

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