

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.385 of 2016
and C.M.P.No.2069 of 2016

1.Sathyavathi
2.K.Raghavendra
3.K.Srinivasan
4.K.Suriyanarayanan
1 to 4 rep by its Power Agent
Arumugam

... Petitioners

Vs

1.C.Anantharaman
2.C.Jawakar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in I.A.No.997 of 2016 in I.A.No.566 of 2016 in O.S.No.223 of 2016 dated 25.01.2016 pending on the file of the I Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.A.Thiagarajan, Senior Counsel
for Mr.K.Sivaganam
For Respondents : Mr.R.Thiagarajan

ORDER

The plaintiffs in Original Suit No.223 of 2016 pending on the file of the I Assistant Judge, City Civil Court, Chennai are the petitioners in the present revision preferred under Article 227 of the Constitution of India. The respondents are defendants 1 and 2 in the said suit. The above said suit was filed by the revision

petitioners for a permanent injunction against the defendants therein, restraining them from interfering with the alleged peaceful possession and enjoyment of the suit property. The plaint was admitted and numbered as a suit. An application filed under Order XXXIX Rule 1 of C.P.C. for interim injunction was taken on file as I.A.No.523 of 2016, an *ex parte* order of ad-interim injunction came to be granted on 20.01.2016. Such an order was granted till 28.01.2016, the next hearing date fixed for hearing. Thereafter, the defendants 1 and 2 filed an application under Order XXXIX Rule 4 of C.P.C. for vacating the order of interim injunction granted in favour of the plaintiffs. The same was taken on file as I.A.No.997 of 2016. The said petition came to be filed on 25.01.2016 and on the same day, an order came to be passed by the learned I Assistant Judge, City Civil Court, Chennai to the following effect:

"Learned counsel for the petitioners would submit that an order was passed by the Hon'ble High Court Madras in C.M.A.No.2049 of 2011 maintaining status quo on 30.07.2013. Hence the order passed by this court on 20.01.2016 is hereby set aside."

As against the said order, the present Civil Revision Petition has been filed by the plaintiffs in the above said suit. Notice before admission was given to the respondents 1 and 2, who have filed a caveat.

2. The arguments advanced by Mr.A.Thiagarajan, learned Senior Counsel arguing for Mr.K.Sivaganam, learned counsel on record for the petitioners in the Civil Revision Petition and by Mr.R.Thiagarajan, learned counsel for the respondents 1 and 2 are heard. The certified copy of the petition and order and other documents produced in the form of typed set of papers are also perused.

3. It is the contention of Mr.A.Thiagarajan, learned Senior Counsel for the petitioners that the impugned order dated 25.01.2016 made in I.A.No.997 of 2016 came to be passed by the learned trial Judge, without even hearing the revision petitioners and without affording an opportunity of being heard and that hence, the order is liable to be set aside, as it is against the celebrated principle of natural justice *audi alteram partem*.

4. Per contra, it is the contention of Mr.R.Thiagarajan, learned counsel for the respondents 1 and 2 that, since the Court was convinced of the fact that the order came to be obtained, suppressing a material fact regarding the existence of an order of *status quo* passed by the High Court in C.M.A.No.2049 of 2011 and also in suppression of the fact that in a similar suit filed by the very same plaintiffs in O.S.No.7267 of 2015, they failed to get an order of interim injunction, which would go to show abuse of process of Court and also in a way forum shopping, the impugned order came to be passed.

5. As an answer to the above said contention of Mr.R.Thiagarajan, learned counsel for the respondents 1 and 2, Mr.A.Thiagarajan, learned Senior Counsel for the petitioners submits that, without admitting that such mistake would have been committed by the petitioners, condemning the petitioners by vacating the order without hearing them, is against the basic principles of natural justice and on that score alone, this Court has to interfere with the impugned order and set aside the same.

6. After hearing such a submission made by the learned Senior Counsel, the learned counsel for the respondents 1 and 2 made an attempt to contend that the order impugned in this revision petition came to be passed only after hearing both sides.

7. But, this Court was taken through the petition and order to show that the petition was filed on 25.01.2016; that notice was given to the counsel for the revision petitioners herein, who made an endorsement to the effect that the revision petitioners herein wanted to file counter; that when the Original Suit stood adjourned to 28.01.2016, without advancing the hearing of the same and without affording an opportunity of being heard to the revision petitioners, the impugned order came to be passed in a haste in an endeavor to see that the learned trial Judge should not earn the wrath of the High Court.

8. If at all, the order of interim injunction came to be passed contrary to the order of *staus quo* passed by the High Court, even then, having passed such an order, the learned trial Judge ought to have given a date of hearing, may be the very next day of filing of the application for vacating injunction, heard the parties and then passed the order. The very urgency with which the learned trial Judge chose to pass the order impugned in this revision shows lack of application of mind, not only to the facts of the case but also to the principles of law, especially the principle of natural justice *audi alteram partem*. On that score alone, the order of the trial Court deserves to be interfered with and set aside by this Court in exercise of its power of

superintendence over the Subordinate Courts under Article 227 of the Constitution of India.

9. Accordingly, the revision petition is allowed. The order dated 25.01.2016 made in I.A.No.997 of 2016 is set aside. I.A.No.997 of 2016 is remanded back to the trial Court with a direction to dispose of the same, after giving an opportunity to the respondents therein, who are the revision petitioners herein to file a counter and make their submissions. The said exercise shall be completed within a week from the date of receipt of a copy of this order. The interim order already granted in I.A.No.523 of 2016 on 20.01.2016 shall stand extended until further orders to be made by the trial Court. It is made clear that this Court does not express any opinion regarding the merits of the matter and the trial Court has to dispose of the application for injunction and the application for vacating injunction, purely on merits uninfluenced by any of the observations made in this order. No costs. Consequently, connected Miscellaneous Petition is closed.

08.03.2016

Index : Yes
Internet : Yes
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Note to Office :
Issue order copy on or before 14.03.2016

To
The I Assistant Judge,
City Civil Court, Chennai.

P.R.SHIVAKUMAR, J.

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