

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P No.586 of 2012

T.V.Arumugam

...Petitioners

Vs.

1.P.Sundaramurthy
2.A.N.Rangasamy
3.R.Santhamani

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.639 of 2006 in O.S.No.777 of the 2006 on the file of the II Additional District Munsif, Coimbatore dated 25.02.2011.

For Petitioners : Mr.Venkatachalapathy
for Mr.S.Kadarkarai

For Respondent : N.Anand Venkatesh

ORDER

The fair and the decretal order dated 25.02.2011 and made in the application in I.A.No.639 of 2006 in O.S.No.777 of 2006 on the file of the Additional District Munsif Court, Coimbatore are under challenge in this memorandum of civil revision.

2. The revision petitioner herein is the plaintiff in the suit in O.S.No.777 of 2006, whereas the respondents herein are the defendants. The above said suit is filed by the revision petitioner as against the respondents seeking the relief of permanent injunction.

3. The suit was contested by the respondents by filing their written statement. Along with the suit, the revision petitioner/plaintiff had also filed an application for temporary injunction. The trial Court had granted an order of ad-inteirm injunction on 07.12.2005. The order passed by the trial Court was also brought to the notice of the respondents on 09.12.2005. According to the revision petitioner, immediately after the receipt of notice with reference to the order of injunction, the respondents had brought the rowdy elements and attempted to dispossess him on 11.12.2005. In this connection, a complaint was also lodged. That on 18.12.2005, the respondents 2 and 3 with the help of their henchmen had trespassed into the suit property and taken forcible possession in utter disregard to the order of injunction. According to the revision petitioner, the respondents had committed an act of contempt by disobeying the order of the Court.

4. In this connection, the revision petitioner/plaintiff had filed a petition in I.A.No.639 of 2006 to restore the possession of the suit property to him by directing the police officers of the Sirumugai Police

Station by granting an order of temporary mandatory injunction.

5. This petition was resisted by the respondents 2 and 3 as the first respondent remained *ex parte*. After hearing both sides, the learned District Munsif had proceeded to dismiss the said petition on the ground that no reference was available on the documents produced by the revision petitioner/plaintiff to show that he was in possession of the suit property. Even in Ex.B10 also, his name was not found place. Since, no *prima facie* case was made out by the revision petitioner/plaintiff, the above said petition was dismissed. Having been aggrieved by the impugned order, the plaintiff stands before this Court with this revision.

6. It is significant to note here that the petition in I.A.No.639 of 2006 seems to have been filed under Order XXXIX Rule 2A r/w. Section 151 of the Code of Civil Procedure. The prayer of the petition is extracted as under:

"For the reasons stated in the accompanying affidavit the petitioner prays that this Hon'ble Court may kindly be pleased to restore the possession of the suit property to the petitioner by directing the police officers of the Sirumugai Police Station and render justice."

7. Apparently there seems to be variation in the prayer in the affidavit as well as the prayer in the petition. In the affidavit, the petitioner/plaintiff had sought for an order of temporary mandatory

injunction. As aforesaid the application in I.A.No.639 of 2006 itself is filed under Order XXXIX Rule 2A.

8. As envisaged under Order XLIII Rule 1(r), the impugned order which is passed under XXXIX Rule 2A is an appellable order and not a revisable order. Therefore, at the first instance, this Court would point out that the revision itself is not at all maintainable.

9. Secondly it is to be noted that the very suit is filed for bare injunction. If anything is discussed on the facts of this case, it would definitely cause prejudice to the case of either parties and therefore, this Court carefully restricts itself from discussing anything as the main is pending.

10. The revision petitioner claims that he came to be in occupation of the suit land as a cultivating tenant under one P.V.Nagarajan as per the lease agreement entered into between the said P.V.Nagarajan and the revision petitioner dated 05.12.2001. The lease period was three years and subsequently it was extended periodically. It is also revealed from Paragraph 3 of the plaint that originally the suit property was owned by the defendants 2 and 3 and as such they were in possession and enjoyment of the said property and subsequently the above said P.V.Nagarajan had purchased the property from the Defendants 2 and 3

under a sale deed dated 03.05.2001. But, this fact was denied by the respondents 2 and 3 saying that the second respondent/defendant had borrowed a sum of Rs.1 lakh from the said P.V.Nagarajan as he was doing money lending business. Since the amount was not able to be paid along with interest, the said P.V.Nagarajan and the plaintiff along with their henchmen had obtained a fake sale deed from the defendants 2 and 3 under threat and therefore, according to the Defendants 2 and 3, the said sale deed said to have been executed by them was not true. They would further contend that the order of ad-interim injunction dated 07.12.2005 and made in the application in I.A.No.791 of 2005 was passed without their knowledge and notice. Subsequently, they had received the notice along with the copies of the documents which were produced with the plaint through the lawyer of the revision petitioner as per Order XXXIX Rule 3 of the Code of Civil Procedure. According to defendants 2 and 3, the revision petitioner/plaintiff was not at all in possession and enjoyment of the property.

11. In Paragraph No.8 of the affidavit, the revision petitioner has stated that the respondents were attempting to disposes him from the suit property and on several occasions they made attempts to disposes him from the suit property and ultimately on 18.05.2005, the respondents 2 and 3 had trespassed into the suit property with their henchmen and forcibly taken possession. In Paragraph No.7 of the counter, the

respondents have stated that on 15.12.2005, the revision petitioner / plaintiff along with the first respondent Sundaramurthy had come to the suit property in a car and attempted to take possession and based on the complaints lodged by respondents 2 and 3, Mettupalayam Deputy Superintendent of Police came directly to the spot and taken the revision petitioner/plaintiff and his men to the police station and after due enquiry they were allowed to go. According to the respondents, they had not received any notice with regard to the order of interim injunction passed by the trial Court.

12. However, the learned trial Judge in Paragraph No.5 of the impugned order has observed that the revision petitioner had miserably failed to produce any satisfactory evidence to show his possession over the suit property and even in Ex.P10 also his name was not found place. Insofar as this revision petition is concerned, the petitioner has stated that he was dispossessed from the property by the respondents 2 and 3 on 18.12.2005. In this connection two things have to be established:

1. Whether the revision petitioner / plaintiff was in possession of the property as on the date of filing of suit; and
2. Whether the revision petitioner / plaintiff was in possession on the date of his alleged dispossession from the suit property i.e., as on 18.12.2005.

13. Mr.Venkatachalapathy, learned counsel who is appearing for

Mr.S.Kadarkarai, who is on record for the revision petitioner, in support of his argument, has placed reliance upon the following three decisions:

1. ***Meera Chauhan Vs. Harsh Bishnoi and another*** reported in ***2007 (1) CTC 89;***
2. ***Lakshmikanthan and Others Vs. Thiruvengadam and another*** reported in ***1992 (1) MLJ 297;*** and
3. ***Kudiyar and 5 Others V. B.Ranganathan*** reported in ***1991-1-L.W-604.***

14. In the decision first cited supra (Meera Chauhan's case) while speaking on behalf of the Division Bench of the Apex Court, **Hon'ble Mr. Justice Tarun Chatterjee** has observed that Section 151 confers wide powers on Court to make such orders as may be necessary for ends of justice or to prevent abuse of process of Court. Court can pass order of injunction in form of restoration of possession of property and existence of Order 39 Rule 1 would not bar such relief. Courts would however exercise such powers only in exceptional circumstances where Code does not lay down any procedure. Court can invoke inherent powers to put back parties in possession when dispossession takes place in violation of order of injunction or stay order and can also give appropriate direction to police authority to render aid to aggrieved parties for due and proper implementation of orders passed in suit and also to order police protection for such implementation.

15. In the decision second cited supra, (Lakshmikanthan's case), a learned Judge of this Court has observed as under:

"No party can dispossess the other party during the pendency of the suit and claim an advantage on the fact of it. When the plaintiffs were in possession of the suit property on the date of filing of the suit and prayed for injunction for protecting their lawful possession and interim injunction has been granted, it is not open to the other side to forcibly enter into the possession of the suit property and then when the plaintiffs come forward with the alternative prayer for recovery of possession resist it stating that the petitioners are not cultivating tenants of the property. It is proved by unassailable evidence that plaintiffs were in possession under a lease. It does not make any difference whether they were contractual lessees or cultivating tenants. Once they are proved to be lessees having been in possession of the land under a contractual lease or as cultivating tenants, their possession as on the date of suit is bound to be protected and if during the pendency of the suit, the possession was forcibly removed, even without as amended prayer for recovery of possession, by virtue of the inherent powers of the Court the Courts is competent and the Court is obliged to put back the parties in their original possession by restoring possession to the plaintiffs and court should not allow anybody to take the law in his own hands and dispossess the plaintiff when the court is seized of the matter."

16. In the decision third cited supra (Kudiyan's case), Ratnam, J., Judge of this Court as he then was has observed as under:

"By ordering police help the court below had merely taken the follow up steps to implement its earlier order of injunction. The objection that a direction of that nature cannot be issued to the police authorities, who are not parties to the proceedings, raised by the petitioners has no substance. When the court finds that a litigant, who had obtained an order from it, is not in a position to have its full benefit owing to either the obstruction or non-cooperation of the other party to the proceedings, it is always open to the Court to resort to the law enforcement machinery to see that its order is obeyed and I do not see anything illegal or irregular about it. The civil revision petition is dismissed with costs."

17. In **Meera Chauhan's** case [**2007 (1) CTC 89**] cited first supra, the Apex Court has observed that Section 151 confers wide powers on Court to make such orders as may be necessary for ends of justice or to prevent abuse of process of Court. The Apex Court has also held that Court could pass order of injunction in form of restoration of possession of property and existence of Order XXXIX Rule 1 CPC would not bar such relief. The Apex Court has further held that **Courts would however exercise such powers only in exceptional circumstances where the Code does not lay down any procedure.**

18. It is to be highlighted that where the Code does not lay down any specific procedures, Courts can exercise the inherent powers conferred on it only in exceptional circumstances:

"Every Court is constituted for the purpose of doing justice according to law and must be deemed to possess as a necessary corollary and has inherent in its very constitution of such powers as may be necessary to do the right and to undo the wrong in the course of administration of justice. This is the recognised principle underlying the provisions contained in Section 151 CPC [P.V. Varadaraja Iyer vs Ammukutty Amma (AIR 1998 Kerala 7 (DB)], quoting Supreme Court decision in J.M.D. Syndicate v. I.T. Commissioner, New Delhi, AIR 1977 (SC) 1348: 1977 Tax LR 685)

19. This Court also endorse the view taken by the Hon'ble Apex Court and would like to say that where during grant of interim injunction, the injunction is violated and the opposite party take forcible possession from the plaintiff, order of mandatory injunction for restoration of possession in exercise of powers under Section 151 CPC will be proper. When the possession of the plaintiff over the suit property as on the date of alleged dispossession is doubtful, the prayer sought for by the plaintiff in the application cannot be granted by pressing into service of the inherent jurisdiction of the Court under Section 151 of the Code of Civil Procedure.

20. Once the Court finds the applicant is entitled to the relief sought for, the relief can be granted without being guided by the provisions of law mentioned in the application. It is settled principle of law that the Court necessarily need not be guided by the provisions of law under which the

application is made. The Court has to look into the contents of the application and the prayer made on such basis. **What is to be seen is whether the applicant is entitled to the relief prayed for in the facts and circumstances of the case?**

21. The Court is not powerless to grant relief, if the ends of justice and equity demands because the powers vested in the court under Section 151 of the C.P.C are of wide scope and ambit. At the same time the Court cannot exercise its inherent powers contrary to the power conferred under the Court. The inherent power under Section 151 is in addition and complimentary to the express powers granted under the Code.

22. As observed by the Apex Court in ***Arjun Singh v. Mohindra Kumar (AIR 1964 (SC) 993:1964 SCD 715:(1964) 2 Andh LT 341: ILR (1964) 2 All 590***, it is settled principle of law that the inherent powers of a Court is in addition to and complementary to the powers expressly conferred under C.P.C, but that power will not be exercised if it is exercised is inconsistent with or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of the code.

23. On coming to the instant case on hand, for preferring an appeal against the order passed by the trial Court under Order XXXIX Rule 2A of CPC, a specific provision is made out under Order XLIII Rule 1(r). Under

this circumstance, the revision, according to the view of this Court, is not at all maintainable under Article 227 of the Constitution of India as the trial Court has not committed any jurisdictional error or abuse of process of Court.

24. This Court, after giving its careful consideration to the real issue which is involved in this case, finds that as observed by the learned trial Judge, the alleged possession of the revision petitioner/plaintiff in respect of the suit property as on the date of filing of the suit as well as on the date of his alleged dispossession is to be established through adequate and acceptable evidences before the trial Court at the time of trial. Under this circumstances, this Court is of the view that the impugned order does not suffer with any infirmity or discrepancy and therefore, this Court does not see any merit in the revision petition.

In the result, the Civil Revision Petition is dismissed confirming the impugned order of the learned II Additional District Munsif, Coimbatore dated 25.02.2011 and made in I.A.No.639 of 2006 in O.S.No.777 of 2006. The learned trial Judge is directed to dispose of the main suit itself as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

22.09.2016

Index: Yes/No

Internet: Yes

To

II Additional District Munsif
Coimbatore

T.MATHIVANAN.J.,

gpa

C.R.P No.586 of 2012 &
M.P.No.1 of 2010

22.09.2016