

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.04.2017

Delivered on : 25.04.2017

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

CRP (PD) No.2041 of 2014 and
M.P.No.1 of 2014

Durai

...Petitioner

versus

1.P.Raja

2.Padmavathi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 07.11.2013 passed by the Sub-Court, Poonamallee in C.M.A.No.8 of 2013 confirming the order passed in I.A.No.103 of 2013 in O.S.No.35 of 2013 by the Principal District Munsif, Poonamallee.

For Petitioner : Mr.Yashodvardhan
Senior Counsel for
Ms.R.Poornima

For Respondents : No appearance

ORDER

This Civil Revision Petition challenges the judgment dated 7 November 2013 in C.M.A.No.8 of 2013, dismissing the appeal filed against the order in I.A.No.103 of 2013 in O.S.No.35 of 2013, directing the parties to maintain *status quo* during the currency of the original suit.

2. The respondents filed a suit in O.S.No.35 of 2013 before the District Munsif at Poonamallee, for permanent injunction restraining the petitioner from interfering with their fish business "Vaanagaram Fish Market" located in the suit schedule properties.

3. Before the Trial Court, the respondents contended that after taking land from the petitioner on lease, the first respondent constructed shops for selling fish. Subsequently, the second respondent filed a suit for partition against the petitioner in O.S.No.101 of 2011 before the Principal District Court, Thiruvallur. The relationship of the parties strained thereafter. The petitioner started interfering in the business conducted by the first respondent. The petitioner collected

exorbitant amount from the trucks carrying fish into the fish market. This made the respondents to file the suit for injunction.

4. The respondents filed an application in I.A.No.103 of 2013 for temporary injunction. The application was opposed by the petitioner. The learned Trial Judge directed the parties to maintain *status quo*. The order was upheld by the First Appellate Court.

5. The learned Senior Counsel for the petitioner contended that the first respondent has already filed a Public Interest Litigation in W.P.No.20203 of 2013 before this Court in connection with the fish business. According to the learned Senior Counsel, the Trial Court, without considering the *prima facie* case, balance of convenience and irreparable injury, directed the parties to maintain *status quo*. The First Appellate Court, without considering the related facts upheld the said order. The learned Senior Counsel contended that there is no case made out by the respondents for grant of an interim order to maintain *status quo*.

6. None appeared on behalf of the respondents.

7. The respondents filed application in I.A.No.103 of 2013 in O.S.No.35 of 2013 to restrain the petitioner from interfering with their fish business conducted in the petition schedule property. Before the Trial Court, the first respondent contended that the petitioner has been making all sorts of hindrance in his business and is trying to evict him from the market premises. The petitioner, in the counter affidavit contended that the fish market was developed by him spending considerable amount. The fish market was established with the permission of the statutory authorities.

8. Since it was an application for temporary injunction, the Trial Court was expected to consider the *prima facie* case, balance of convenience and irreparable injury. The Trial Court considered the voluminous documents produced by the respondents and arrived at a *prima facie* finding that the respondents have been carrying on fish business in the schedule property. It is true that the petitioner disputed the documents produced by the respondents. The learned Trial Judge observed that the genuineness of those documents can be considered only during the course of trial. The first respondent has produced string of documents to show that he has been doing business

and that he has been receiving fish from various places and the same was transported to Vaanagaram Fish Market. The petitioner has not produced any material to arrive at a finding that the respondents projected a false case.

9. The order passed by the Trial Court was once again considered by the First Appellate court. The learned Subordinate Judge, Poonamallee considered the documents and pleadings and concurred with the *prima facie* finding given by the learned Trial Judge in I.A.No.103 of 2013.

10. The petitioner wanted this Court to set aside the findings given against him by the two Courts below. The documents available on record and the pleadings would support the case of the respondents. It is not as if there were no materials before the Trial Court to arrive at a *prima facie* finding that the first respondent has been doing business in fish and the same should be protected during the currency of the civil suit. There is no question of re-appreciating the materials considered by the Trial Court and the First Appellate Court for the purpose of arriving at a different conclusion. The scope of

revisional jurisdiction under Article 227 is very limited. It is not open to this Court to act like an Appellate Court, while exercising jurisdiction under Article 227 of the Constitution of India.

K.K.SASIDHARAN.,J.

(svki)

11. The fact that the first respondent filed a writ petition before this Court in public interest would not be a valid ground to set aside the well considered order passed by the Trial Court, which was later confirmed by the learned Sub-ordinate Judge. I am therefore of the view that there is absolutely no merit in the contention taken by the petitioner.

12. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2017

svki

To

- 1.The Sub-Court, Poonamallee
- 2.The Principal District Munsif, Poonamallee

Order in
CRP (PD) No.2041 of 2014

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