

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2017

Delivered on : 19.01.2017

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**

AND

THE HON'BLE MR.JUSTICE **V.PARTHIBAN**

Original Side Appeal No.82 of 2014 and
M.P.No.1 of 2014

1.Radha

2.Karthik

3.Moorthy (Minor)

4.Keerthi (Minor)

(Minors 3 and 4 represented by Mother and
Guardian Mrs.Radha)

...Appellants

VS.

1.Kuppammal

2.Suguna

3.Uma

4.Brihma

5.Prasad

6.Ravi

7.Kalaiselvan

8.Joseph

9.Chandra

10.Anthony

(Respondents 4 to 10 are given up)

...Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules r/w Clause 15 of Letters Patent, against the order in O.A.No.407 of 2011 in C.S.No.665 of 2010 dated 20.11.2012 passed by this Court.

For Appellants : Mr.T.Velumani

For Respondents : No appearance for R1 to R3
R4 to R10 given up

J U D G M E N T

(delivered by **K.K. SASIDHARAN,J.**)

This intra court appeal is directed against the order dated 20 November 2012 in O.A.No.407 of 2011, restraining the first appellant from inducting new tenants in the suit schedule property, pending disposal of the civil suit.

Background

2. The respondents 1 to 3 filed a civil suit in C.S.No.665 of 2010 before the original side of this Court praying for a decree of partition of the suit property into four equal shares and allotment of one such share to them with separate possession and enjoyment. The respondents 1 to 3 further made a prayer for past and future mesne profits.

3. The respondents 1 to 3 filed an interlocutory application in O.A.No.407 of 2011 to injunct the first appellant from inducting fresh

tenants on allegation that there is an attempt to overcome the earlier order passed by this Court, directing the tenants to deposit the rent in Court by creating new tenancy.

4. The learned single Judge taking into account the earlier order dated 31 January 2011 restrained the first appellant from inducting new tenants. Feeling aggrieved, the appellants have come up with this intra court appeal.

Submissions on behalf of Appellants

5. The learned counsel for the appellants submitted that on account of the restraint order passed by the learned single Judge, the appellants are not in a position to give the building on rent notwithstanding the availability of portions to be given on lease. The learned counsel submitted that the appellants would be satisfied in case they are permitted to give the vacant buildings on lease with conditions.

6. None appeared on behalf of the respondents.

The Point

7. Whether the learned single Judge was correct in injunction the first appellant from inducting new tenants, pending disposal of the civil suit for partition?

Analysis and Conclusion

8. The respondents 1 to 3 filed the suit for partition with a claim that they are entitled to a share in the property. According to the respondents 1 to 3, the appellants have been taking the income from the suit property without accounting or apportioning among the sharers.

9. The suit was contested by the appellants by filing written statement. The appellants contended that the respondents 1 to 3 have lost their right by ouster and adverse possession.

10. The respondents 1 to 3 earlier filed an application in O.A.No.830 of 2010, to restrain the first appellant herein from collecting the rent from tenants and another application in A.No.4122 of 2010, to direct the tenants to deposit the monthly rent into the Court. The applications were

allowed by the learned single Judge by order dated 31 January 2011. The tenants were directed to deposit the monthly rent into Court to the credit of the suit every month on or before 7th day.

11. The order was challenged before the Division Bench in O.S.A.No.319 of 2011. The Division Bench directed the first appellant to deposit a sum of Rs.7,000/- (Rupees Seven thousand only) being the portion of the monthly rent, into the Court to the credit of the suit every month on or before 7th day, beginning with 7 March, 2012. The intra court appeal was partly allowed.

12. The respondents 1 to 3 filed interlocutory application in question in O.A.No.407 of 2011 to restrain the first appellant from inducting new tenants. The respondents 1 to 3 apprehended that in order to overcome the order passed by the learned single Judge and the direction given by the Division Bench, there is a move to induct new tenants and to appropriate the entire rent without disclosing the names of the tenants.

13. The learned Judge having found that there was an earlier order directing the first appellant to deposit the rent, opined that it would not be prudent to permit the first appellant to induct new tenants.

14. The tenants inducted by the first appellant originally were made parties to the suit. The learned single Judge while considering the application in O.A.No.4122 of 2010 found that there were several tenants paying rent to the first appellant. The order passed by the learned single Judge was modified by the Division Bench taking into account the submission made by the first appellant that she would deposit the share of the respondents 1 to 3 into court deposit.

15. The respondents 1 to 3 filed the interlocutory application in O.A.No.407 of 2011 with a grievance that in order to defeat the earlier order passed by the learned single Judge and the Division Bench, the first appellant is in the process of inducting new tenants. The learned single Judge passed an equitable order taking into account the interest of the respondents 1 to 3 and the other sharers. There is no illegality in the said order given the facts of the case.

16. The learned counsel for the appellants submitted that on account of the order dated 20 November 2012, the appellants are not in a position to give vacant portion on lease to the tenants.

17. It is open to the appellants to file appropriate application before the learned single Judge disclosing the names of the new tenants along with their willingness to take the respective portion and indicating the monthly rent agreed to be paid by them. It is for the learned single Judge to take a decision in the matter with regard to induction of new tenants after hearing the parties to the civil suit.

17. The order dated 20 November 2012 in O.A.No.407 of 2011 is confirmed, subject to the modification as indicated above.

18. The intra court appeal is allowed in part to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

(K.K.SASIDHARAN,J.) (V.PARTHIBAN, J.)

19 January 2017

K.K.SASIDHARAN,J.
and
V.PARTHIBAN,J.

(svki)

Judgment in

O.S.A.No.82 of 2014

19.01.2017