

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1872 of 2008
& M.P.No.1 of 2008

Sadasivam

.. Petitioner

Vs.

1.K.Arumugam
2.Manickam
3.Vasantha
4.Indirani
5.Sivakami
6.Ilango
7.Manonmani
8.Vellingiri
9.P.Kanagaraj

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the order and decretal order dated 26.02.2008 made in I.A.No.2362 of 2007 in O.S.No.2206 of 2007 on the file of the District Munsif Court, Coimbatore.

For Petitioner : Mr.A.R.L.Sundaresan,
Senior Counsel
for A.L.Ganthimathi

For R1 : Mr.Elizabeth Ravi
for Mr.P.Raja

For R2 & R5 : Not ready in notice

For R3,4,6 to 9 : No Appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 26.02.2008 made in I.A.No.2362 of 2007 in O.S.No.2206 of 2007 on the file of the District Munsif Court, Coimbatore.

2. The petitioner is the second defendant, first respondent is the plaintiff and respondents 2 to 9 are the defendants 1, 3 to 9 in O.S.No.2206 of 2007 on the file of the District Munsif Court, Coimbatore. The first respondent filed the said suit for permanent injunction restraining the petitioners and respondents 1,3 to 9 from interfering with the peaceful possession and enjoyment of the suit property. Along with the suit, the first respondent filed I.A.No.2362 of 2007 for interim injunction. According to the first respondent, he is owner of the suit property by virtue of the sale made through the Court auction and possession was handed over to him as per the order passed in E.P.No.263 of 1985.

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3. The petitioner filed counter affidavit which was adopted by respondents 3,4,6 and 7 and submitted that they are in possession of the suit property. They filed a suit in O.S.No.548 of 1988 along

with their tenants Valliraj and Kanagaraj against the first respondent. In the said suit, they obtained interim injunction in I.A.No.684 of 1988 in their favour against the first respondent and C.M.A.No.75 of 1988 filed by the first respondent was dismissed. The possession was not given to the first respondent in the E.P and alleged delivery passed as per the order in E.P.No.263 of 1985 in O.S.No.2098 of 1984 is only a paper delivery. Taking Advantage of the interim injunction, the first respondent trespassed into the suit property and dispossessed the petitioner and respondents 2 to 7 and therefore prayed for restoration of their possession.

4. Before the learned Judge, the first respondent marked 17 documents as Exs.P.1 to P17, the petitioner and respondents 2 to 9 marked 28 documents as Exs.R1 to R28. Both the petitioner and respondents did not produce any oral evidence.

5. The learned Judge considering all the averments made in the affidavit, counter affidavit, materials available on record and documents and the judgments relied on by the parties, dismissed the application and also rejected the prayer of the petitioner and respondents 2 to 9 for restoring their possession.

6. The petitioner has come out with the present Civil Revision Petition, challenging the portion of the order dated 26.06.2008 made in I.A.No.2362 of 2007 in O.S.No.2206 of 2007 wherein their request for restoration was rejected.

7. Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for first respondent and perused the materials available on record.

8. According to the petitioner, the learned Judge failed to see that the interim injunction was granted in their favour in O.S.No.548 of 1988 in I.A.No.684 of 1988 and C.M.A.No.75 of 1988 filed by the first respondent was dismissed, confirming the interim injunction in favour of the petitioner and respondents 2 to 9. The learned Judge ought to have ordered restoration of their possession. This contention of the learned Senior Counsel is without merits. No interim injunction was granted in favour of the petitioner and respondents 2 to 9 in the present suit.

9. In view of this fact, the learned Judge has rejected the relief claimed by the petitioner and other respondents 2 to 9 for

restoration of their possession. According to the petitioner and respondents 2 to 9, the first respondent trespassed into the suit property in spite of the injunction. On considering the materials available on record, the learned Judge also dismissed the application filed by the first respondent for interim injunction. There is no irregularity or illegality warranting interference with the order passed by the learned Judge dated 26.02.2008. It is open to the petitioner and other respondents to initiate appropriate proceedings in O.S.No.548 of 1988.

10. In the result, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs. The suit is of the year 2007, the learned District Munsif is directed to dispose the suit as expeditiously as possible, in any event not later than two months from the date of receipt of a copy of this order.

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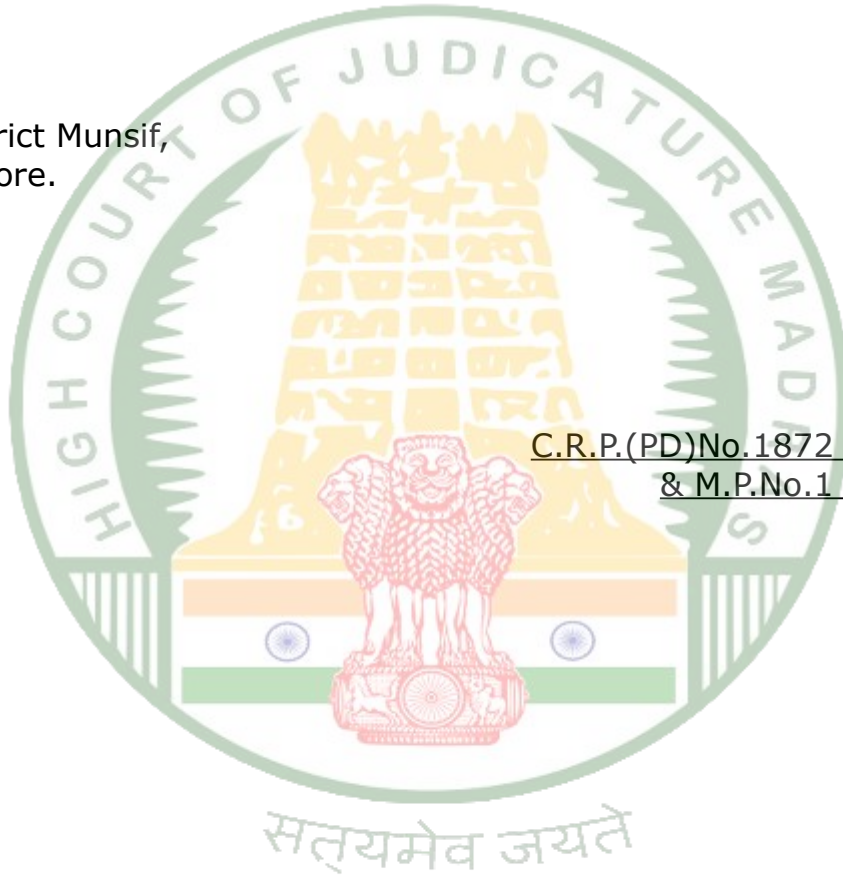
Index : Yes/No
dm/gsa

V.M.VELUMANI, J.

dm

To

The District Munsif,
Coimbatore.



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