

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2017

CORAM:

THE HON'BLE DR.JUSTICE P.DEVADASS

CRP(PD). No.2301 of 2013 and
M.P.No.1 of 2013

Karuppan .. Petitioner/Plaintiff

Vs.

Kannan ... Respondent/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India against the Order made in I.A.No.877/2012 in O.S.No.173/2009 dated 31.7.12 on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioner : Mrs. S.R.Sumathy
For Respondent : Mr. P.Valliappan

O R D E R

The plaintiff in O.S.No.173 of 2009 on the file of the learned Principal District Munsif, Kallakurichi, Villupuram District, is the revision petitioner.

2. Plaintiff sought for injunction with respect to a piece of property described in the suit schedule. The land belongs to Government, the plaintiff acquired the property by way of bought-in land as mentioned in the plaint, in vernacular language நில எல் தரிசு. His father was in enjoyment of the property. Therefore, plaintiff is in possession the defendant tried to interfere with his possession.

3. The suit has been resisted by the defendant by filing written statement pleading a divergence case and also questioning the very title of the plaintiff.

4. In this case, issues were framed. Suit was put on trial. P.W.1 deposed. Both sides evidence was over. The suit was posted for arguments. At this juncture, the plaintiff filed I.A.No.877 of 2012 for re-opening the plaintiff's evidence to let in two

documents. They are a registered sale agreement dated 04.07.1986 and a copy of the suit register in O.S. No.382 of 1997.

5. The defendant filed counter with serious objections.

6. The trial Court after hearing both sides coming to the conclusion there is no sufficient pleadings for introducing the said evidence, dismissed the petition.

7. According to the learned counsel for the revision petitioner/plaintiff, the plaintiff got the two documents at a later point of time. The plaintiff has to prove his case also has to let in documentary evidence. In the circumstances, the documents were filed. Virtually, the trial Court has denied opportunity to the plaintiff to adduce evidence.

8. On the other hand, the learned counsel for the respondent/defendant would contend that the documents sought to be introduced are quite contra to the very base case of the plaintiff. In the circumstances, the trial Court has rightly dismissed the re-open petition.

9. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

10. This matter arose out of an injunction suit. Injunction is being asked for to protect the possession. Relief of injunction cannot be granted for mere possession. Issues relating to title need not be gone into an injunction suit because it is not a suit on title. But the plaintiff, who seeks the discretionary relief of injunction must establish that his possession is a legal possession. Even a permissive occupier, entitled to be protected his possession. A person, in settled possession can also seek injunction from the court. Even, a person, who has been put in possession based on a sale agreement can also come to the Court using the same as a shield to protect his possession. Basically, in an injunction suit, the said possession may be based on title or adverse possession. Thus a mere usurper, interloper trespasser cannot get injunction.

11. When the plaintiff seeks to relief of injunction primarily he is bound to prove/establish his possession is a legal possession. Proof of a case does not rest with the pleadings. A mere pleadings unless substantiated by oral and documentary evidence will remain only as a plea. Of course, all the evidence need not be set out in the plaint.

12. In fact, in course of time, the rigour of rules of pleadings or has undergone a change. Court started giving relief based on the record established. Of course, there must be some base in the pleadings. Court cannot cry or wash off its hand that it cannot give relief because of procedure is hand maid of justice and not justice itself technicalities.

13. Now, in this case, still judgment has not been pronounced. At any stage of the case, it is the duty of the plaintiff and the defendant to bring forth the evidence, oral and documentary to assist the Court to render a correct finding.

14. In this case, plaintiff sought to file two documents to advance his case. Even Government may be the owner of the property. Even with regard to Government property, there are some documents. When a person is in possession under a colour of some valid documents, even that may be also considered by the Court.

15. In a re-open petition, in such petition itself a case should not be decided. Now a minimum relief has been asked for by the plaintiff an opportunity to let in further evidence. But still the plaintiff has to establish before the Court, the relevancy of the document and prove the same and still the defendant has got the opportunity to put forth his version as to the said documents when they were sought to be admitted in evidence. In such a view of the matter, dismissing this kind of petition at the infancy stage itself is not a correct approach.

16. In view of the foregoing,

Ordered as under:

- (i) This revision succeeds.
- (ii) The order passed by the learned Principal District Munsif, Kallakurichi in I.A.No. 877 of 2012, is set aside.
- (iii) I.A stand allowed.
- (iv) Consequently, recall petition filed by the plaintiff/petitioner shall also be allowed. in the said I.A.
- (v) The plaintiff/petitioner shall be permitted to let in evidence for the purpose mentioned in the said I.A.
- (vi) The trial Court will give reasonable opportunity to the respondent/defendant.
- (vi) As the suit is of the year 2009 and the scope of the suit is also very limited, the trial Court will expeditiously dispose of the suit preferably, within three months from the date of receipt of a copy of this order uninfluenced by any

observation contained in this order.

(vii) No costs.

(viii) Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Villupuram
2. The Principal District Munsif,
Kallakurichi Taluk,
Villupuram District.

Copy to

1. The Registrar (Judicial)
2. The Assistant Registrar (Appellate side)
High Court, Madras.

+lcc to Mr.P.Valliappan, Advocate, S.R.No.22320
+lcc to Mrs.S.R.Sumathy, Advocate, S.R.No.21397

VGII(CO)
RS(25/07/2015)

CRP(PD). No.2301 of 2013

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