

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4616 of 2013
and
M.P.No.1 of 2013**

S.Venkatesh

.. Petitioner

Vs

1.Manickam Narayan
2.Premalatha Narayan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 26.11.2013 passed in I.A.No.17209 of 2013 in O.S.No.6323 of 2013 on the file of the XVI Assistant City Civil Court, Chennai.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.B.Rajamanickam

ORDER

This civil revision petition is directed against an order dated 26.11.2013 passed in I.A.No.17209 of 2013 in O.S.No.6323 of 2013

on the file of the learned XVI Assistant City Civil Court, Chennai.

2.The revision petitioner herein is the defendant in the above suit filed by the respondents /plaintiffs for Permanent Injunction restraining the revision petitioner from interfering with peaceful possession and enjoyment of suit schedule property.

3.It is the case of the respondents that the suit schedule property belong to them and at the promise and instance of the revision petitioner herein by investing huge amount and inducting the revision petitioner as working partner, they started hotel business in the suit property.

4.However according to the respondents, the revision petitioner failed to conduct the business in a proper way in suit schedule property and he also started a new hotel business nearby the suit property and the revision petitioner left the hotel business operated in Suit property without rendering proper accounts and there was a dispute with regard to the accounts. The respondents carried out hotel business at the suit scheduled property belonging to them.

5.According to the respondents, in the said factual backdrop the

revision petitioner who is doing hotel business in nearby area, in view of the business dispute stated above and that revision petitioner's new business was not so good as expected, all of a sudden attempted to interfere with the respondent's possession over the property, demanding closure of the hotel at the Suit property. Hence they have filed above suit.

6.The respondents also took out an Interlocutory application in I.A.No.17209 of 2013 under Order XXXIX Rule 1 and 2 of CPC. The Learned Trial Judge by the impugned order dated 26.11.2013 has granted Interim Injunction and the said Order is under challenge in this civil revision petition.

7.I heard Mr.V.Raghavachari, learned counsel for the petitioner and Mr.B.Rajamanickam, learned counsel for the respondents and perused the entire materials available on record.

8.On perusal of the typed set of papers and additional typeset of papers, it is seen that the revision petitioner has filed a suit in O.S.No.6351 of 2013 before the learned XVIII Assistant City Civil Court seeking injunction against the respondents herein contending that he is a tenant under the respondents doing hotel business

exclusively in the suit property.

9.He has also taken out an application in I.A.No.17271 of 2013 under Order 39 Rule 1 and 2 restraining the respondents from interfering with the peaceful possession of the revision petitioner and the injunction is also found to be granted by the Trial Court.

10.At this juncture, it is further noticed that an ex-parte order of interim injunction was granted in favour of the respondents.

11.It is further seen that the impugned order of interim injunction is granted by the Trial Court without proper appraisal of fact that the respondents failed to produce Restaurant license. Further though the respondents claim that the revision petitioner as working partner, but nothing brought on record to show there existed partnership firm or relation. In fact neither partnership resolution nor any Deed to that effect is produced before the Trial Court.

12.Per Contra, the revision petitioner herein is able to produce the BSNL and EB receipts of the suit property showing it was paid from his account. However mere production of bills cannot be taken as proof of possession.

13. Whereas the most important document for consideration is the Restaurant license dated 21.5.2013, the license issued by the Government of Tamil Nadu, Food Safety and Drug Administration Department under Form " C" standing in the name of the revision petitioner denoting that the hotel business in the suit premise in the name of "Idli Vilas" reflects the revision petitioner's name and he is the license holder. The Revision petitioner is also able to produce Notices issued by the Corporation of Chennai towards the quantum of garbage from the restaurant.

14. No doubt that if Notice has been issued in the above injunction application filed by the respondents and if the revision petitioner had been given a chance, the above documents might have been produced by the revision petitioner for proper adjudication.

15. Therefore, I am of the considered opinion that the revision petitioner has to be given a chance to put forth his case before the Trial Court.

16. In the result, this civil revision petition is allowed by setting aside the order passed in I.A.No.17209 of 2013 in O.S.No.6323 of

2013, dated 26.11.2013. The trial Court is directed to dispose of the above Interlocutory Application, by giving notice to both sides and dispose the same on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

08.02.2017

vs

Note: Issue order copy on 30.01.2019

Index: Yes/No

Internet: Yes/No

To

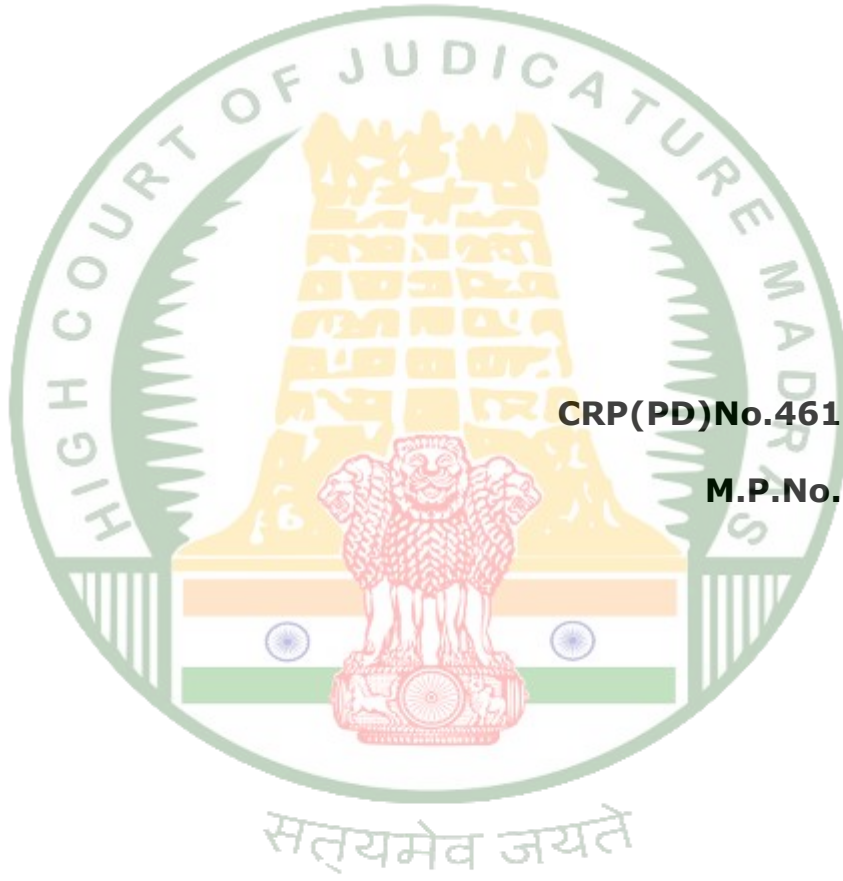
The XVI Assistant City Civil Court, Chennai.



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M.V.MURALIDARAN,J.

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