

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.4738 & 4739 of 2012

Leela Subramanian .. Petitioner in both C.R.Ps

Vs.

R. Balachandran ..Respondent in both C.R.Ps.

PRAYER IN BOTH C.R.Ps: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 06.11.2012, made in I.A.Nos.2556 & 2557 of 2012 in O.S.No.2411 of 2012 on the file of the Principal District Munsif Court, Coimbatore.

For Petitioner : Mr.D. Muthuselvam

For Respondent : Mr.B. Nedunchezhiyan

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal orders dated 06.11.2012, made in I.A.Nos.2556 & 2557 of 2012 in O.S.No.2411 of 2012 on the file of the Principal District Munsif Court, Coimbatore.

O.S.No.2411 of 2012 on the file of the Principal District Munsif Court, Coimbatore. The respondent filed the said suit against the petitioner for permanent injunction, restraining the petitioner from evicting the respondent except by due process of law. Along with the suit, the petitioner filed an application in I.A.No.2508 of 2012 for interim injunction, not to evict the petitioner except by due process of law, pending suit. The learned Judge by the order dated 01.11.2012 granted interim injunction.

3. The respondent filed an application in I.A.No.2556 of 2012 for Police Aid to unlock the portion of the suit property and application in I.A.No.2557 of 2012 for appointment of an Advocate Commissioner. The learned Judge has granted ex-parte direction in I.A.No.2557 of 2012 and appointed Advocate Commissioner without issuing any notice to the petitioner by non-speaking order.

4. According to the respondent, after grant of interim injunction, the petitioner tried to evict the respondent unlawfully and the respondent prevented the same. The petitioner locked the Door Nos.352 and 353 from outside. On these averments, the learned Judge

<http://www.judis.nic.in> granted the interim direction and appointed an Advocate Commissioner,

directing him to file the report on or before 09.11.2012.

5. Against the two orders dated 06.11.2012, passed in I.A.Nos.2556 & 2557 of 2012, the present two Civil Revision Petitions are filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner and respondent and perused the materials on record.

7. At the time of admission, this Court dismissed the Civil Revision Petition in CRP.No.4737 of 2012 filed by the petitioner to strike out the plaint in O.S.No.2411 of 2012. I have carefully perused all the materials on record and heard the learned counsel appearing for the petitioner and respondent.

8. From the impugned orders passed in all the three applications, it is seen that the learned Judge has passed the exparte orders. Interim injunction was granted on the ground that the respondent is a statutory tenant. As far as the directions given in the present two application in I.A.Nos.2556 & 2557 of 2012 are concerned, the learned Judge has not given any reason for providing Police Aid and for appointment of Advocate Commissioner and without hearing the petitioner passed

order.

9. The impugned orders passed by the learned Judge, Coimbatore reads as follows:

In I.A.No.2556 of 2012

"Perused and Permitted"

In I.A.No. 2557 of 2012

"Heard. Records perused. Advocate Commissioner Thiru.K.Karthikeyan is appointed as Advocate Commissioner and his fee is Rs.4000/- to be paid by the petitioner directly and after giving notice to both side parties and Advocate commissioner has to visit the petition mentioned property and note down the physical features of the suit property and to note that the petitioner is in possession of the same along with the photographer to take photographs of the suit property and file his report and plan by 09.11.2012."

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10. According to the petitioner, based on the above direction, the respondent illegally re-entered the suit premises, which he had already handed over to the owner Subramanian, husband of the petitioner, seven months earlier. After taking possession, according to the petitioner, the suit property was renovated for conducting the business

for his son. According to the petitioner, the respondent purchased the adjoining property and renovated the same and was carrying on business in the said shop. The learned Judge did not give any opportunity to put forth the case of the petitioner.

11. The learned counsel for the respondent submitted that the petitioner, after interim injunction granted by the learned Judge, illegally locked the Door Nos.352 & 353, from outside and also tried to evict the respondent from other portion. The learned Judge, considering these facts, has rightly granted interim direction and appointed Advocate Commissioner. The said order is valid and legal. This contention of the learned counsel for the respondent is without merits.

12. When the learned Judge has given a positive direction, he ought to have issued notice to the petitioner before passing such order and he ought to have heard the petitioner and respondent. By failing to give notice and to hear the petitioner, the learned Judge has committed an irregularity and illegality.

13. In the result, the orders dated 06.11.2012, passed in

<http://www.judis.nic.in> 1. A.Nos.2556 & 2557 of 2012, by the learned Principal District Munsif,

Coimbatore are set aside and the respondent is directed to hand over

V.M.VELUMANI, J.

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the possession of two portions which he took as per the direction passed in I.A.No.2557 of 2012, within two weeks from the date of receipt of a copy of this order. The report filed by the Advocate Commissioner is scrapped. The respondent has sought relief of injunction and the suit is of the year 2012. In view of the same, the learned Judge is directed to dispose of the suit, within four months from the date of receipt of a copy of this order.

14. Accordingly, these Civil Revision Petitions are allowed. No costs.

31.07.2017

Index : Yes/No
nl/gsa

To

The Principal District Munsif Court, Coimbatore.

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