

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.NPD.No.1842 of 2017

and

CMP.No.8837 of 2017

Manjula

... Petitioner

Vs

1.Palanivel

2.Ramesh

3.Selvi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 11.04.2017 made in I.A.No.63 of 2012 in O.S.No.7 of 2017 on the file of District Munsif Court, Rasipuram.

For Petitioner : Mr.R.Thanjan

सत्यमेव जयते

ORDER

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This Civil Revision Petition is filed to set aside the fair and decretal order dated dated 11.04.2017 passed in I.A.No.63 of 2012 in O.S.No.7 of 2017 on the file of District Munsif Court, Rasipuram.

2. The plaintiff in O.S.No.7 of 2017 on the file of the District Munsif Court, Rasipuram, is the revision petitioner herein.

3. According to the petitioner, the respondent herein has filed the suit in O.S.No.7 of 2017 seeking permanent injunction restraining the defendants/respondents herein from interfering with the peaceful possession and enjoyment of the suit properties. In the aforesaid suit, the petitioner has filed an application in I.A.No.63 of 2017 in O.S.No.7 of 2017 seeking interim injunction. After hearing the arguments of both sides, the trial Court has dismissed the said application. Feeling aggrieved by the said order, the petitioner has filed the present civil revision petition before this Court.

4. The learned counsel for the petitioner would contend that on the date of filing the suit, the petitioner was not in possession of the suit property. The trial Court has failed to consider the fact that the petitioner is in possession and enjoyment of the suit property and has got *prima-facie* case and the balance of convenience is in favour of the petitioner and unless interim injunction is granted against the respondent, the petitioner would be suffered with irreparable loss. Hence, the impugned order passed by the trial court is liable to be set aside.

5. I have carefully considered the materials placed before this Court and also perused the order passed by the trial court.

6. The trial Court found that the petitioner has not shown the *prima-facie* case and the balance of convenience and also the suit is one for permanent injunction. The petitioner is not able to establish that he got prima facie case and balance of convenience and irreparable loss.

7. It is relevant to state that an appeal shall lie from an order under Rule 1,2,2A, 4 and Rule 10 of Order XXXIX of CPC. While invoking Order XLIII CPC, the appellate Court can re-appreciate the documents and affidavit filed by the petitioner independently and grant an interim injunction. But while exercising power under Article 227 of the Constitution of India, this Court can see whether the Court below exercised its discretionary power judicially or arbitrarily and this Court cannot sit in the arm chair of the appellate Court to re-appreciate the documents and evidence produced by the revision petitioner.

8. Under such circumstances, this Court finds that there is no merits in this revision filed by the petitioner. Hence, this civil revision petition is

P.VELMURUGAN,J.

kkd

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.04.2018

Index : yes/No
Internet : yes/No
kkd

To

The District Munsif Court,
Rasipuram.



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