

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.3245 of 2012

and M.P.No.1 of 2012

A.Naseerullah

... Petitioner

Vs

Inayathullah

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated 09.07.2012 in C.M.A.No.89 of 2011 on the file of the learned District Judge, Udhagamandalam, The Nilgiris, reversing the fair and final order dated 25.11.2011 passed in I.A.No.299 of 2011 in O.S.No.80 of 2011 on the file of the learned Subordinate Judge, Udhagamandalam, The Nilgiris.

For Petitioner : Mr.S. Kingston Jerold

For Respondent : No appearance

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned District Judge, (Appellate Authority), Udhagamandalam, The Nilgiris, in C.M.A.No.89 of 2011 against the fair and decreetal order in I.A.No.320 of 2011 in O.S.No.80 of 2011, in and by which the order of injunction obtained by the revision petitioner was set aside by the learned District Judge, Udhagamandalam, The Nilgiris.

2.The facts in brief which are necessary for the disposal of the Civil Revision Petition are as follows:

The respondent herein along with four of his sisters had filed O.S.No.4 of 2011 against the children of his paternal uncle L.Mohammed Azmathullah, L.Mohammed Azeezullah as well as his brother L.Mohammed Hafeezullah and two sisters Rasia Begum and Zakiabi. The said suit was filed for Partition with reference to her property which is called as "Clopton Bungalow"

at Ooty. The revision petitioner had purchased the share of one Mohammed Basheer and since the respondent herein was interfering with his possession, the revision petitioner had filed the suit O.S.No.80 of 2011 on the file of the learned Subordinate Judge, The Nilgiris, for a permanent injunction restraining the respondent herein, his family members, servants and agents from trespassing into and / or interfering with the possession of the property. In the suit O.S.No.80 of 2011, the revision petitioner had filed I.A.No.299 of 2011 for an ad-interim injunction. The case of the revision petitioner was that in the suit O.S.No.80 of 2011, the respondent had clearly stated that except for the property subject matter of the suit O.S.No.4 of 2011, all other properties had been partitioned and were in separate possession of the respective sharers and that the suit property in O.S.No.80 of 2011 was the one that had been allotted to his vendor Mohammed Basheer and his possession to be protected.

3.The learned Subordinate Judge, The Nilgiris, after contest by both parties had granted an ad-interim injunction as prayed for in I.A.No.299 of 2011 in O.S.No.80 of 2011. The learned Judge had drawn from the pleadings of the respondent in O.S.No.4 of 2011 to grant injunction. This order was challenged by the respondent in C.M.A.No.89 of 2011 on the file of the learned District Judge -cum- Appellate Authority, Udthagamandalam, The Nilgiris. The learned Judge reversed the order passed by the learned Subordinate Judge, contending that the revision petitioner had not proved that the Partition was given effect to. Challenging this order, the revision petitioner is before this Court.

4.Though notice has been served on the respondent, he did not appear before this Court through person or their pleader.

5.Heard Mr.S. Kingston Jerold, who took me through O.S.No.4 of 2011 and the findings of the learned Subordinate

Judge, Udhagamandalam, while granting the order of injunction. It is seen that in the suit O.S.No.4 of 2011, the respondent herein has taken the following categorical stands:

"6.The plaintiffs further submit that except the "CLOPTON BUNGLOW", situated at S.No.B.651/2 of R.S.No.3903 of an extent of 1.35 – 8/16 acres of land, the rest of the properties that included land and buildings were partitioned and all the legal heirs are in separate possession and enjoyment of the properties allotted to them."

6.In the said Plaint, the respondent had clearly stated that there was an Agreement between the sons of Mohammed Abdul Latheef dated 26.06.1975 to partition the property and the terms of the partition including the details about the properties that had been allotted was also given. The suit O.S.No.4 of 2011 was filed after this agreement wherein the respondent had clearly stated that except for the property subject matter to the suit O.S.No.4

of 2011, all other properties had been partitioned amongst various sharers and they were in separate possession and enjoyment of the properties. In the light of the above, categorical statement by the respondent in his Plaint, it is not known as to how the learned District Judge has proceeded to hold that the revision petitioner has not produced any proof to prove the Partition. The learned Judge has lost sight of the fact that the application is for injunction where the petitioner is entitled to an order of injunction if he makes out a *prima facie* case.

7. In my opinion, the revision petitioner has shown a *prima facie* case by pointing out the pleadings of the respondent himself in a suit filed by him namely, O.S.No.4 of 2011. The learned Subordinate Judge has rightly relied upon this admission, while granting the ad-interim injunction in I.A.No.299 of 2011. I find that the learned District Judge -cum- Appellate Authority, Udhagamandalam, The Nilgiris, had committed a grave error and this order is liable to be set aside.

In the result, this Civil Revision Petition is allowed. The Judgment and Decree passed by the learned District Judge, Udhagamandalam, The Nilgiris, in C.M.A.No.89 of 2011 dated 09.07.2012, is set aside and the order passed by the learned Subordinate Judge, Udhagamandalam, The Nilgiris in I.A.No.299 of 2011 in O.S.No.80 of 2011 dated 25.11.2011 stands confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.10.2018

Index : Yes/No
Internet : Yes/No
mps

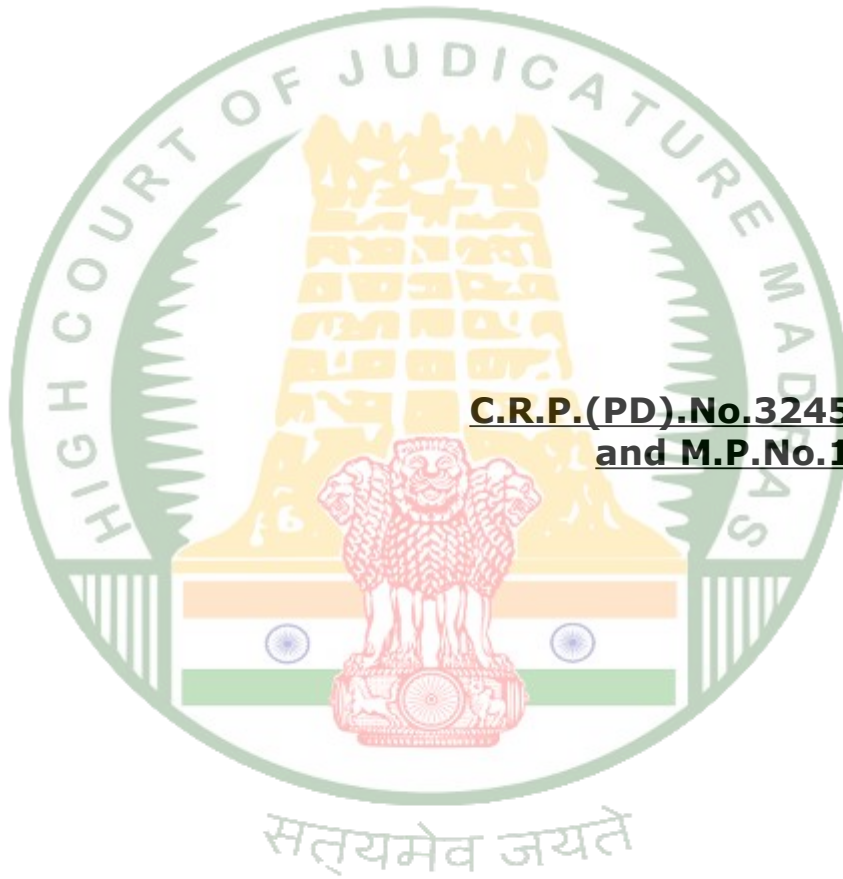
To

1.The District Judge,
Udhagamandalam,
The Nilgiris.

2.The Subordinate Judge,
Udhagamandalam,
The Nilgiris.

P.T. ASHA, J,

mps



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