

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM

THE HONOURABLE **MR.JUSTICE N.SATHISH KUMAR**

C.S.No.851 of 2017
and
O.A.No.1086 of 2017

B.Nirmal Bothra ... Plaintiff

Vs.

1.A.B.Ashok Bothra
2.B.Vasanth Kumar ... Defendants

Prayer: The Civil Suit has been filed under Order IV Rule 1 of the O.S.Rules read with Order VII Rule 1 of C.P.C. 1908, praying for a permanent injunction restraining the defendants their men, agents or anyone claiming through them from interfering with the Plaintiff's peaceful possession and enjoyment in the suit property.

For Plaintiff : Ms.P.T.Asha

For Defendants : Mr.Jayesh B.Dolia
for M/s.Aiyar & Dolia for D1

JUDGMENT

This suit itself is filed for a permanent injunction restraining the defendants, their men, agents or anyone claiming through them from interfering with the Plaintiff's peaceful possession and enjoyment

in the suit property.

2.In the meanwhile the application in O.A.No.1086 of 2017 has been filed for interim order. The interim order was also granted by this Court and extended from time to time.

3.It is an undisputed fact that the plaintiff and the defendants are brothers.

4.It is the contention of the plaintiff that though the property stands in the name of the plaintiff, both the plaintiff and the defendants were running a business jointly in the year 2005. Thereafter, due to some misunderstanding, the family business was wound up in the month of August, 2017 and the first defendant has taken out all his belongings. Thereafter, the first defendant was trying to interfere with the suit property. Hence the suit.

5.The learned counsel appearing for the defendants submits that the first defendant is not running a business. In fact, he was a tenant and as a tenant he was running a business in the suit property

and he was forcibly evicted from the suit property on 03.10.2017. Thereafter the suit has been filed.

6.Now, it is the contention of the learned counsel for the first defendant that he is out of the possession and the plaintiff is in possession. By making false averment, he has filed the present suit and obtained interim orders.

7.Affidavit filed by the first defendant shows that the plaintiff alone is the owner of the property. This fact is not in dispute. It is admitted by both sides that now the suit property is leased out to one Nithish, S/o.Vasanth and at present he is in possession of the property as a tenant and paying Rs.50,000/- as rent.

8.In view of these pleadings and submissions of the learned counsel on either side, I am of the view that nothing survives in the suit itself for effective adjudication. Admittedly, the respondent is not in possession and the property has already been leased to the third party.

9.Therefore, I am of the view that the suit itself can be

disposed of. It is also specifically admitted by the learned counsel for the defendant that the defendant had already been dispossessed from the suit property even much prior to the filing of the suit. Those allegations are to be decided separately in separate proceedings.

10. At present, the defendant is not in possession of the suit property and admittedly the tenant is in possession of the property and there was no threat continuing from the respondent. The learned counsel for the respondent also submitted that he has filed a suit for damages and he has no intention to disturb the possession except by due process of law.

11. In view of the same, this Court is of the view that keeping this application and suit is nothing but waste of time. Accordingly, this suit is disposed of. No costs. Consequently, connected application is closed.

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Index : yes / no

Internet : yes / no

Speaking / non speaking

N.SATHISH KUMAR, J.

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