

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Review Application.No.312 of 2018
&
C.M.P.No.22008 of 2018
in
C.R.P.(PD)No.2401 of 2010

1.A.V.S.Ganesan

... Petitioner

Vs

1.A.V.S.Balasubramanian

... Respondent

Prayer: Review Application filed under Section 114 of the Code of Civil Procedure to review the order passed in C.R.P.(PD) No.2401 of 2010 dated 12.10.2018.

For Petitioner

:

Mr.K.M.Vijayan
Senior Counsel

For Respondent

:

Mr.T.P.Manoharan
Senior Counsel
for Mr.K.P.Jotheeswaran

Judgment

The above review petition was filed in respect of the order of this Court dated 12.10.2018 in C.R.P.(PD).No.2401 of 2010. It was brought to the notice of this Court that while passing the order dated 12.10.2018 this Court has proceeded on the basis that I.A.No.174 of 2009, was a petition seeking ad interim injunction, whereas, the application I.A.No.174 of 2009 was filed for "restoring possession" of the B-Schedule property along with all the household articles described in the C-Schedule to the petitioner to the revision petitioner/respondent herein. The application for injunction was numbered as I.A.No.5 of 2009. In paragraph No.5 of the order, under review also, the petition for ad interim injunction has been described as I.A.No.174 of 2009. The Senior Counsel appearing on behalf of the review petitioner would further submit that I.A.No.5 of 2009 has itself reached its finality in view of the order dated 25.03.2009.

2.The learned Additional District Munsif, Mayiladuthurai had passed the following order in I.A.No.5 of 2009:

"25.03.2009: Enquiry No interim order is in favour. The main suit riped for trial. Hence this petition closed without prejudice to this interest of petitioner's case."

3.He would further contend that the order under review has to be modified, since, this Court has proceeded on the basis that the injunction petition is still pending enquiry. The counsel for the respondent/revision petitioner also admits the anomaly. The review petition is therefore ordered modifying the order dated 12.10.2018 in C.R.P.(PD)No.2401 of 2010 on the following lines. In Paragraph No.5 of the order instead of IA.NO.174 of 2009, the same shall be changed to I.A.No.5 of 2009.

4.Likewise, Paragraph No.13 of the order is modified as follows:

"The Additional District Munsif, Mayiladuthurai is directed to dispose of the suit O.S.No.4 of 2009, pending at the state of trial. The District Munsif shall take up the trial immediately on receipt of a copy of the order and shall dispose of the suit on or before 15.02.2019."

On these lines, review petition stands disposed of. In all other respects order dated 12.10.2018 in C.R.P.(PD).No.2401 of 2010 shall remain intact. Consequently, connected Civil Miscellaneous Petition is also closed. There shall be no order as to costs.

18.12.2018

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Index : Yes/No

Speaking order/non-speaking order

Order Copy to be issued on 19.12.2018

To

1.The Principal District Munsif,
Mayiladuthurai.

2.The Additional District Munsif,
Mayiladuthurai.



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P.T.ASHA, J.,

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Review Application.No.312 of 2018 &
C.M.P.No.22008 of 2018 in
C.R.P.(PD)No.2401 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD)No.2401 of 2010

&

M.P.No.1 of 2010

A.V.S.Balasubramanian

... Petitioner

Vs

A.V.S.Ganesan

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the against the fair and decreetal orders dated 09.04.2010 made in I.A.No.174 of 2009 in O.S.No.4 of 2009 on the file of the Additional District Munsif, Mayiladuthurai.

For Petitioner : Mr.T.P.Manoharan
Learned Senior Counsel
for Mr.K.P.Jotheeswaran

For Respondent : Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition is filed challenging the order passed by the learned Additional District Munsif, Mayiladuthurai in I.A.No.174 of 2009 in O.S.No.4 of 2009 in refusing to order restoration of possession of the B-Schedule property along with the household articles to the revision petitioner. The genesis of the case arises out of the joint enjoyment of the property described in the B-Schedule in the suit O.S.No.4 of 2009 filed by the revision petitioner herein.

The facts in brief are as follows:

2.The suit property A-schedule belonged to the father of the petitioner and respondent one Sakkarapani Pathar, who had purchased it in the year 1955. After his purchase the father had demolished existing structure and constructed a two storied building consisting of a ground floor having residential portion in

the rear side and two shops in the front side abutting the road. The first floor had two residential portions on the rear side i.e., on the eastern and western sides and a room in the front side abutting the road. Above the first floor there was an open terrace and staircase room. The access to the rear portion of the building as well as the first and second floors was through a passage situated in between the two shops in the ground floor abutting the road. The respondent herein is the elder son of Sakkarapani Pathar, the revision petitioner is the middle son and they have a younger brother one A.V.S.Asokan. Till the father's death the father was living in the suit premises. After his marriage the revision petitioner was asked to reside on the rear eastern side residential portion of the first floor. The respondent was living in rear residential portion on the ground and also in the front room in the first floor and was running jewellery business in the western side shop in the ground floor after retirement from service. Till his retirement the respondent was travelling to various places. After the marriage of the last son

A.V.S.Asokan, the father had allotted the rear western side residential portion in the first floor to him.

3.It appears that the last son A.V.S.Asokan had released his interest in the suit schedule property under registered release deed 18.02.2008 in favour of the respondent herein. After the release the respondent had kept the rear western side portion locked. He demanded that the revision petitioner should also vacate and handover possession of his share and execute release deed in favour of the respondent. However, the revision petitioner did not accede to his request and thereafter the respondent started to giving him trouble in the enjoyment of the property. The revision petitioner would submit that he is residing in the said portion along with his daughter and son-in-law and his two sons are living separately.

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4.The revision petitioner would submit that on 15.06.2008 the respondent had blocked the access to the revision petitioner's

portion and put up a lock over the existing lock in the eastern side shop which is in the occupation of revision petitioner. The revision petitioner demanded the access which was however turned down by the respondent which constrained the revision petitioner to file a police complaint on 15.06.2008. The police interfered and restored the possession to the revision petitioner. After handing over possession the respondent filed a counter complaint on 06.07.2008 and the same is pending enquiry. In view of this interference in his possession the revision petitioner had come forward with the suit O.S.No.4 of 2009 on the file of the Additional District Munsif, Myladuthurai for an injunction restraining the respondent, his men, agents and persons claiming through him from interfering and disturbing the revision petitioner's peaceful possession and enjoyment of the B-schedule property.

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5. Along with the plaint the revision petitioner had also filed I.A.No.5 of 2009 seeking *ad-interim* injunction. The respondent

herein had entered appearance on 06.01.2009 and sought time for filing counter. The learned Judge on hearing the submission adjourned the matter to 13.01.09 for counter and disposal. On 06.01.2009 when the revision petitioner's daughter and husband had locked the B-Schedule property and gone out the respondent herein had put a lock over the existing lock. Immediately the revision petitioner had moved an application I.A.No.6 of 2009 for appointment of Advocate Commissioner to prove the existence of a lock being put over the existing lock and also the fact that all the household articles were inside the premises. Realising this, the respondent herein broke open the lock and removed all the articles before the Advocate Commissioner had come to inspect property. When the Advocate Commissioner had visited on 21.01.2007 none of the articles of the revision petitioner was available and he had also given a report. The revision petitioner had filed an objection to the said report.

6. Since the petitioner had been thrown out unceremoniously and illegally, the revision petitioner filed a petition under Section 151 of the Code of Civil Procedure in I.A.No.174 of 2009 to restore possession of the B-Schedule property to the plaintiff and the restoration of the household articles detailed in the C-Schedule. This petition was objected to by the respondent herein, who would contend that the property was never used by the revision petitioner. The learned Additional District Munsif who heard the application dismissed the same on the ground that the documents produced does not reflect the name of the revision petitioner but only the name of his daughter and son-in-law and holding the revision has not proved a possession. The application was dismissed and it is this order of the dismissal that has been challenged before this Court in this instant revision petition.

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7. Heard Mr.T.P.Manoharan, learned Senior Counsel for the revision petitioner and Mr.Govi Ganesan, learned counsel for the first respondent.

8. Mr.T.P.Manoharan, learned Senior Counsel would argue that even in the pleadings the plaintiff has narrated that on 15.06.2008, the respondent had put a lock over the existing lock in which the Police complaint was given. Pursuant to which the property was handed over back to the revision petitioner. However thereafter on 06.07.2008 the respondent by way of an after thought had filed a counter complaint and contended that on 15.06.2008 the revision petitioner has trespassed and entered possession of the property. He would therefore contend that the Court below ought to have granted the restoration. The learned Senior Counsel would also rely upon the Judgment of Honourable Supreme Court in ***Tanusree Basu and Others Vs. Ishani Prasad Basu and Others*** reported in **2008(4) SCC 791** in support of his contentions wherein the Honourable Supreme

Court has held that during the pendency of the suit if the respondent takes law into his own hands and dispossesses the respondent the court would indisputably have the jurisdiction to restore possession.

9. Per contra Mr. Govi Ganesan, appearing on behalf of the respondent would contend that there has been no iota of proof from the revision petitioner to show his possession of the suit property B-Schedule. He would also contend that this factor has been discussed by the learned District Munsif and this would only prove that the revision petitioner was not in possession of the property. The learned counsel would further argue that on the contrary the report of the Advocate Commissioner would clearly show that the revision petitioner was not in possession of the property.

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10. Heard the submissions, perused the documents and the Judgments cited by the petitioner. Admittedly the suit property is the joint property of the revision petitioner, respondent and their other brother A.V.S.Asokan. The said A.V.S.Asokan has also released his interest in the suit A-Schedule in favour of the respondent. There is no pleading that on the side of the respondent to show that the revision petitioner has released his interest in the suit property therefore there is a presumption that all parties were jointly enjoying possession of the property. Presently the revision petitioner and the respondent are in possession of the suit property. It is also the admitted case that the suit property contains independent portions and the description of the properties and its enjoyment has not been denied by the respondent. He would only contend that the plaintiff is residing at Mayiladuthurai. The revision petitioner in his plaint and affidavit filed in support of the application had contended that the revision petitioner was residing in the property along with his wife, son-in-law and the daughter. It is

also seen that the revision petitioner has produced the documents issued to the daughter and son-in-law showing the suit property as their address which clearly shows that the property which has been given to the revision petitioner by his father is now being enjoyed by his daughter and son-in-law. The revision petitioner has also produced the various letter correspondence addressed to his daughter, son-in-law to the suit schedule address. He has also produced the licence given for running his Gold business. Therefore, *prima facie* the revision petitioner has established his possession of the suit property. Be that as it may, in the F.I.R. Ex.P.7 which has been given by the respondent himself has clearly stated that on 15.06.2008 the revision petitioner along with his Son-in-law and daughter and thirty other people had trespassed into the property and taken possession of the same. This suit is filed on January 2009, there is no explanation from the respondent as to how they have taken possession from the revision petitioner after 15.06.2008. This clearly gives room for suspicion and the only inference that can

be drawn is that the respondent has taken law into his own hands and forcibly evicted the revision petitioner. It is needless to state that this Court shall not tolerate any act on the part of the parties to take law into their own hands and such act will be dealt with a heavy hand. In the Judgment cited on the side of the petitioner the Honourable the Supreme Court has clearly laid down that if a party takes recourse to any contrivance to dispossess another during the pendency of a suit either in violation the order of injunction or otherwise, the Court indisputably will have jurisdiction to restore the parties back to the same position. The Honourable Supreme Court has observed as follows:

"It is not the law that a party to a suit during pendency thereof shall take law into his hands and dispossess the other co-sharer. If a party takes recourse to any contrivance to dispossess another, during pendency of the suit either in violation of the order of injunction or otherwise, the court indisputably will have jurisdiction to restore the parties back to the

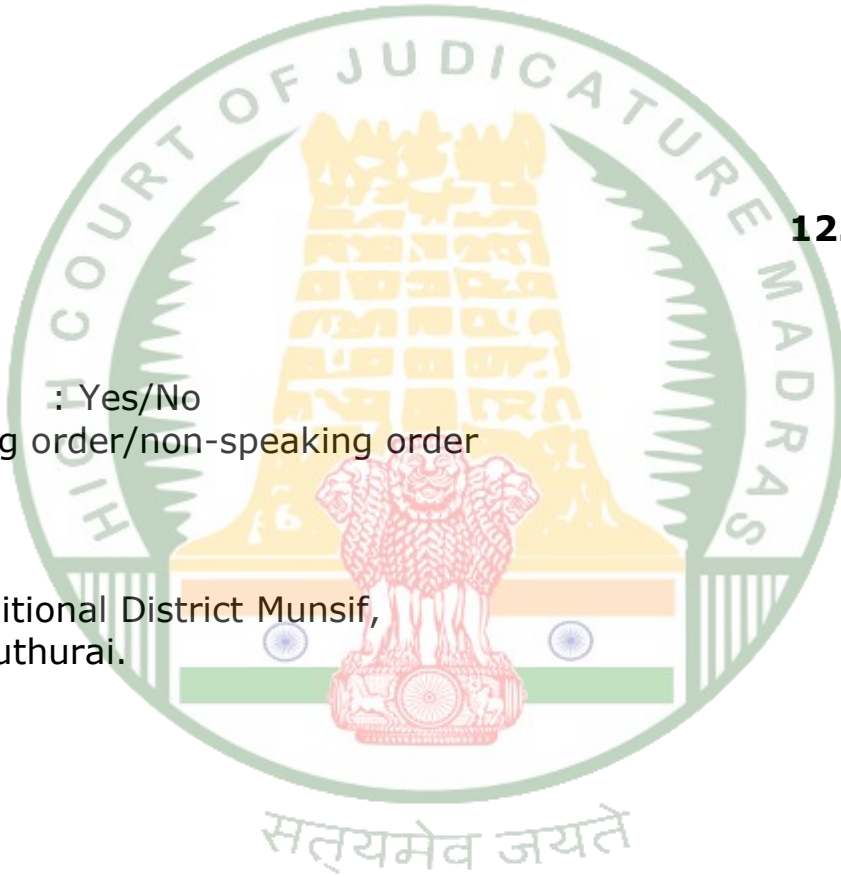
same position."

11. Therefore, this Court is of the opinion that the revision petitioner has *prima facie* made out a case that on the date of the filing of the suit they were in possession of the suit property and their subsequent dispossession is only on account of the illegal act of the respondent.

12. In view of the above, the respondent shall restore possession to the revision petitioner within one week from the date of production of this order copy or else the revision petitioner shall approach the concerned Police station who shall forthwith give effect to this order of the Court.

13. It is seen that the Application I.A.No.174 of 2009 for *ad interim* injunction is still pending. The Additional District Munsif, Mayiladuthurai is directed to dispose of the suit O.S.No.4 of 2009,

pending at the state of trial. The District Munsif shall take up the trial immediately on receipt of a copy of the order and shall dispose of the suit on or before 15.02.2019. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**12.10.2018**

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The Additional District Munsif,
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