



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P(MD)No.430 of 2018 (PD)

and

C.M.P(MD)No.1894 of 2018

Karikalan ... Petitioner / Appellant /Petitioner/Plaintiff

Vs.

Ganesan ... Respondent/Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Section 227 of Constitution of India, praying to set aside the fair and decreetal order, dated 19.10.2016, passed in CMA.No.4 of 2014 on the file of the Subordinate Court, Pudukkottai, confirming the order dated 31.01.2014 passed in I.A.No.284 of 2013 in O.S.No.68 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Thirumayam by allowing this Appeal.

For Petitioner : Mr.N.Balakrishnan

ORDER

This Civil Revision Petition has been filed challenging the order, dated 19.10.2016, passed in CMA.No.4 of 2014 on the file of the Subordinate Court, Pudukkottai, confirming the order rejecting the interim relief of injunction, dated 31.01.2014, passed in I.A.No.284 of 2013 in O.S.No.68 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Thirumayam.

2. The petitioner / plaintiff had filed the suit in O.S.No.68 of 2013 for permanent injunction. Stating that the respondent / defendant has been interfering with the peaceful possession and enjoyment of the petitioner and co-owners over the suit property, he had filed an application seeking the relief of interim injunction, but the same was dismissed by the trial Court, against which he has filed appeal. The first appellate Court has also dismissed the same. Aggrieved by that order, he has filed this civil revision petition.

3. Heard the learned counsel for the petitioner and perused the records carefully.

4. The learned counsel for the petitioner / plaintiff submitted that the paternal uncle of the petitioner sold the suit property for a valid sale consideration to his father and his father settled the same in favour of his children viz., the petitioner and his brothers, and they have been in joint possession and enjoyment of the same without any division amongst themselves. While so, the respondent / defendant, who is the son of paternal uncle, has been



interfering with the peaceful possession and enjoyment of the petitioner and co-sharers stating that the suit property was assigned to his father as Kartha of the family and his father has no right to convey the suit property and the respondent / defendant and his brother and sister are also having right over the property. Therefore, he has filed the suit for permanent injunction and also sought for interim relief of injunction. But the Courts below, without considering the fact that the petitioner / plaintiff and his brothers viz., co-owners have been in possession and enjoyment of the same and one co-owner can maintain a suit on behalf of other co-owners, have rejected the interim relief sought for by the petitioner / plaintiff and therefore, the order impugned in this petition may be set aside and the interim relief of injunction may be granted by allowing this civil revision petition.

5. It is seen that the respondent / defendant specifically disputed the possession and enjoyment of the suit property by the petitioner / plaintiff and the co-owners. It is also seen that except the documents viz., (a) sale deed and (b) patta transfer order copy, no other document has been produced by the petitioner / plaintiff before the Courts below, in order to substantiate their joint possession. The dispute, whether the petitioner / plaintiff and co-owners are in joint possession and enjoyment of the suit property without any division among themselves or not?, is a matter of evidence. Therefore, the relief sought for by the petitioner / plaintiff cannot be granted. The Courts below have rightly rejected the interim relief sought for by the petitioner / plaintiff.

6. In view of the above, this Civil Revision Petition is dismissed at the stage of admission itself. However, the learned Trial Judge is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the trial Court to dispose of the suit within the above stipulated period. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Pudukkottai.

2. The District Munsif cum Judicial Magistrate, Thirumayam

Copy to:

The Record Keeper, V.R.Section,

Madurai Bench of Madras High Court, Madurai(2 Copies)

+1CC to Mr.N.Balakrishnan, Advocate, SR.No. 51885

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