



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.08.2018

DELIVERED ON : 23.10.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

WEB COPY

C.R.P. (NPD) (MD) No. 651 of 2015

and

M.P. (MD) No. 2 of 2015

1.K.Uthandan

2.S.Vellaisamy .. Petitioners/Respondents/Respondents/Defendants

Vs.

1.Viyasaranya Punniya Thina, Trust through its Trustee
S.Ravi

2.V.Ramarao .. Respondents/Appellants/Petitioners/Plaintiffs

Prayer : This Civil revision petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in C.M.A.No.2 of 2012 dated 27.11.2013 on the file of the Sub Court, Uthamapalayam, against the order in I.A.No.424 of 2011 dated 09.12.2011 in O.S.No.188 of 2011 on the file of the District Munsif Court, Uthamapalayam.

For Petitioners

: Mr.P.Muthuvijayapandian

For Respondents

: Mr.N.Dilip Kumar

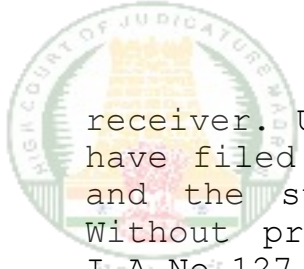
ORDER

Heard Mr.P.Muthuvijayapandian, learned counsel appearing for the petitioners and Mr.N.Dilip Kumar, learned counsel appearing for the respondents.

2.This petition has been filed to set aside the fair and decreetal order passed in C.M.A.No.2 of 2012 dated 27.11.2013 on the file of the Sub Court, Uthamapalayam, against the order in I.A.No.424 of 2011 dated 09.12.2011 in O.S.No.188 of 2011 on the file of the District Munsif Court, Uthamapalayam.

3.The first respondent herein filed a petition in I.A.No.424 of 2011 seeking a prayer of temporary injunction against the petitioners herein. The said I.A. Petition was dismissed by the District Munsif, Uthamapalayam. Against the order of the dismissal, the respondents filed C.M.A.No.2 of 2012 before the Sub Court, Uthamapalayam and the same was allowed by the first Appellate Court. Against the order, the petitioners have filed the petition before this Court.

4.On the side of the petitioners, it is stated that the first respondent has filed a petition in I.A.No.127 of 2011 before Sub Court, Uthamapalayam for a scheme decree and for appointment of a



receiver. Under Section 92 of Civil Procedure Code, the petitioners have filed an application for obtaining permission to file the suit and the suit filed by the respondents was returned unnumbered. Without preferring revision petition against the order passed in I.A.No.127 of 2011, the respondents have filed I.A.No.424 of 2011 before the District Munsif Court, Uthamapalayam. The first petitioner is in possession of 1 acre 47 cents in Survey No.1004 and the second petitioner is in possession of 34 cents in Survey No.1090/1 from the year 1957 as tenants by paying lease amount to the third defendant in the suit and prior to him to his father.

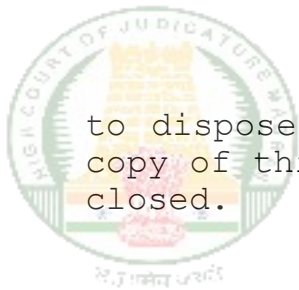
5.On the side of the petitioners, it is stated that the petitioners have produced documents to show that they are in possession of the property. In Ex.R6, it is clearly mentioned that the petitioners are lessee even in the year 1992. The third defendant in the suit in O.S.No.188 of 2011 has admitted the possession of these petitioners and prayed to allow this petition.

6.On the side of the respondents, it is stated that the respondents herein and the third defendant in the suit are the Trustees of Viyasaranya Punniya Thina Trust and the respondents have produced the register of the Trust, adankal and patta. It is stated that there is no entry in the register for cultivating tenant regarding the possession of the petitioners herein and Ex.P16 reveals that there is no entry regarding the cultivation tenancy in the property and prayed to dismiss the petition.

7.A verification of the records reveals that the respondents herein and the third defendant in the suit are performing the duties as Trustees. There is no entry regarding the cultivating tenancy as per Exs.P13 and P16. It is stated that the third defendant who is stated to be one of the Trustees has admitted the tenancy of the petitioners herein.

8.The contention of the respondent is that the third defendant in the suit is colluding with the petitioners herein. It seems that the petitioners are also having some documents to be marked. The prayer in the original suit itself is for bare injunction. The matter to be decided in the original suit and in this petition are the same.

9.In the circumstances, this Court has to decide only one point that is who is in possession of the property. Only after the completion of entire trial, the Court can come to a conclusion whether the petitioners or the respondents are in actual possession of the property and it is the duty of the plaintiffs to prove that they are in possession of the property. From the records, it is seen that the respondents has not produced any records to show the possession. The respondents have not filed the suit for declaration of title. In this circumstances, the order passed by the first Appellate Court is hereby set aside and Status quo is ordered and this Civil Revision Petition is allowed. The trial Court is directed



to dispose the suit within a period of six months from the date of copy of this order. No Costs. Consequently, M.P.(MD)No.2 of 2015 is closed.

WEB COPY

/True Copy/

Sd/-
Assistant Registrar(CS-II)

Sub Assistant Registrar(CS-III)

To

1.The Sub Judge, Uthamapalayam.

2.The District Munsif , Uthamapalayam.

+1CC to Mr.P.Muthuvijayapandian, Advocate, SR.No.91240

+1CC to Mr.N.Dilip Kumar, Advocate, SR.No. 91330

C.R.P. (PD) (MD) No.651 of 2015
23.10.2018

MRN

ES/SKN/RSK/SAR 3/15.11.2018/3P/5C