



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.02.2018

DELIVERED ON : 28.04.2018

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P.(PD)(MD)No.2001 of 2017
and
C.M.P.(MD)No.10052 of 2017

P.Alagarsamy : Petitioner / Respondent / Petitioner /
Plaintiff

vs.

K.Chellapandi : Respondent / Appellant /
Respondent / 1st Defendant

PRAYER : Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree passed in C.M.A.No.8 of 2011 on the file of the II Additional Sub Court, Madurai dated 26.07.2017, reversing the order in I.A.No.321 of 2008 in O.S.No.470 of 2008 on the file of the District Munsif Cum Judicial Magistrate, Vadipatti dated 19.01.2009.

For Petitioner : Mr.T.C.S.Thillainayagam
For Respondent : Mr.C.S.Ravichandran

ORDER

This Civil Revision Petition has been filed to set aside the judgment and decree passed by the learned II Additional Sub Judge, Madurai in C.M.A.No.8 of 2011 dated 26.07.2017, reversing the order passed by the learned District Munsif Cum Judicial Magistrate, Vadipatti in I.A.No.321 of 2008 in O.S.No.470 of 2008 dated 19.01.2009.

2. The facts of the case are that the petitioner herein, as plaintiff, has instituted a suit in O.S.No.470 of 2008 against the respondent herein, before the learned District Munsif cum Judicial Magistrate, Vadipatti seeking permanent injunction and other reliefs. During the pendency of the said suit, the petitioner/plaintiff has filed an interlocutory application in I.A.No.321 of 2008 seeking interim injunction, which was allowed by the Court below by an order dated 19.01.2009. Aggrieved over the same, the respondent herein, as appellant, has preferred C.M.A.No.8 of 2011, before the learned II Additional Sub Judge, Madurai and on 26.07.2017, the first appellate Court has reversed



the finding of the Court below. Aggrieved thereby, the petitioner has preferred the present Civil Revision Petition.

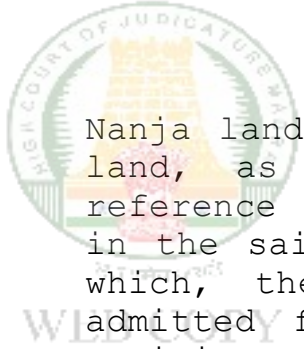
3. The learned Counsel for the petitioner would submit that the suit property belongs to the second defendant, who is the sister of the petitioner and the petitioner is in possession and enjoyment over the same as cultivating tenant. He has already filed T.R.No.9 of 1996 before the Thasildar, Vadipatti, to register his name as cultivating tenant, wherein, an ex-parte order was passed as prayed for. Against the said ex-parte order, A.P.No.23 of 2004 was filed by the second defendant and thereafter, the ex-parte order was set aside and the matter was remitted back for fresh consideration, which is now pending adjudication.

4. He would further submit that in the meanwhile, the 2nd defendant has executed a sale deed in favour of the respondent herein. In order to prove that the petitioner is in possession, he has produced kist receipts and Adangal documents. Despite the same, the first appellate Court has wrongly concluded that whether he was a cultivating tenant or not; whether he is in possession or not; have to be decided only by letting evidences in the main suit and thereby, quashed the interim injunction granted by the Trial Court. Therefore, he seeks interference at the hands of this Court.

5. Narrating the events that took place, the learned Counsel for the respondent, on the other hand, would submit that the respondent has purchased the suit property from the second defendant on 10.09.2008 and prior to the said purchase, he enquired and ascertained that the possession of the property was with the second defendant herself.

6. The learned Counsel for the respondent would strongly contend that in the year 1985 a settlement deed was executed, followed by which, in the year 1991, a sale deed was executed in favour of the second defendant by one Venkatammal, who is none other than the mother of both the petitioner and the second defendant, in respect of the property in question. Having been aware of the same, the petitioner, without impleading the actual owner, has filed tenancy petition in TR.No.9 of 1996 and has fraudulently obtained an ex-parte order and on the strength of the said ex-parte order, he has included his name in the Adangal register as cultivating the land. The said fraudulently obtained ex-parte order was later quashed by the Revenue Divisional Officer in A.P.No.23 of 2004 and the matter is now pending before the Tahsildar in TR.No.5 of 2006 for fresh consideration. These facts were totally suppressed by the petitioner before the Court below.

7. He would further contend that the suit property is not a



Nanja land and therefore, paddy cannot be cultivated in the said land, as alleged by the petitioner. Moreover, there is no reference in the Adangal register that paddy was being cultivated in the said land and the suit property is a coconut thoppu, for which, the petitioner cannot claim tenancy right. It is an admitted fact that there is no tenancy agreement between the petitioner and the second defendant and when there is no documentary evidences to substantiate the said plea, the issue has to be decided only at the time of trial and therefore, the first appellate Court is right in reversing the interim injunction granted by the Court below. Therefore, he prays for dismissal of the present Civil Revision Petition.

8. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

9. It is seen that the second defendant is the sister of the petitioner and their mother, Venkatammal, had executed a deed in respect of the suit property in favour of the second defendant on 26.08.1985 & 22.03.1991. Having been aware of the same, the petitioner, without impleading the actual owner, viz., the second defendant, has filed tenancy petition in T.R.No.9 of 1996, against the said Venkatammal, wherein, an *ex-parte* order was passed. The said *ex-parte* order was later on quashed and the matter was remitted back to the Thasildar for fresh consideration by the Revenue Divisional Officer and the same is said to be pending in T.R.No.5 of 2006.

10. It is the grievance of the respondent that the petitioner, by using the *ex-parte* order, has included his name in the Adangal register as cultivating the land. However, according to the respondent, the setting aside of the order in T.R.No.9 of 1996 was purposefully suppressed by the petitioner before the Court below and interim injunction was obtained and the same was put forth before the lower appellate Court, which, rightly, quashed the interim order.

11. Perusal of records shows that interim order was passed by the trial Court based on the averments of the petitioner that he has been cultivating the suit property. But, in the Adangal register, there is no reference that paddy has been cultivated in the suit property and the suit property is said to be a coconut thoppu. It is also seen that the petitioner is claiming that he has planted coconut saplings in the suit property and the same can only be decided at the outcome of the trial. Moreover, it is an admitted fact that there is no tenancy agreement.

12. Considering the facts and circumstances of the case, this Court is of the view that the petitioner himself has to prove before the trial Court that he was in possession of the property



as a cultivating tenant. The learned appellate Judge had appreciated the entire facts and had vacated the interim order passed by the trial Court and the same does not need any interference at the hands of this Court.

13. In view of the foregoing discussions, this civil revision petition is liable to be dismissed and the same is accordingly, dismissed. No costs. Since, the suit is of the year 2008, the learned trial Judge, without advertting to the findings rendered by this Court in this civil revision petition, is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

gk

To

1.The II Additional Sub Court,
Madurai.

2.The District Munsif Cum Judicial Magistrate,
Vadipatti.

+1 cc to MR.TCS.THILLAINAYAGAM, Advocate SR.No.64375

C.R.P. (PD) (MD) No.2001 of 2017
and

C.M.P. (MD) No.10052 of 2017
28.04.2018

SMA/SV-MMS/SAR-2/31.05.2018:4P/4C