



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(PD)(MD).Nos.1365 & 1366 of 2018

and

C.M.P.(MD)No.5908 of 2018

C.R.P.(PD)(MD)No.1365 of 2018

B.Venugopal @ Venugopalan

... Petitioner/Respondent/
Petitioner/Plaintiff

Vs.

1. Vera Vijayan

2. Nagusamy

... Respondents/Appellants/
Respondents/Defendants 4 & 5

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in C.M.A.No.6 of 2015, dated 18.07.2017 on the file of the Subordinate Court, Ramanathapuram, reversing the fair and decreetal order passed in I.A.No.765 of 2012 in O.S.No.13 of 2012, dated 18.04.2015 on the file of the District Munsif Court, Ramanathapuram.

C.R.P.(PD)(MD)No.1366 of 2018

B.Venugopal @ Venugopalan

... Petitioner/1st Respondent/
Petitioner/Plaintiff

Vs.

1. Angusamy

... 1st Respondent/Appellant/
5th Respondent/5th Defendant

2. Kamala

3. Parthasarathy

4. Mahendra Kumar

5. Vera Vijayan

... Respondents 2 to 5/
Respondents 2 to 5/
Respondents 1 to 4/
Defendants 1 to 4

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in C.M.A.No.8 of 2012, dated 18.07.2017 on the file of the Subordinate Court, Ramanathapuram, reversing the fair and decreetal order passed in I.A.No.50 of 2012 in O.S.No.13 of 2012, dated 08.09.2012 on the file of the District Munsif Court, Ramanathapuram.



(in both C.R.Ps.,)

For Petitioner

: Mr.B.Venugopal @ Venugopalan,
Party-in-person.

For Respondents

: Mr.J.Bharadhan,
for M/s.T.R.Jeyapalam.

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C O M M O N O R D E R

The plaintiff in O.S.No.13 of 2012 on the file of the learned District Munsif, Ramanathapuram, is the Revision petitioner in both these Revision petitions.

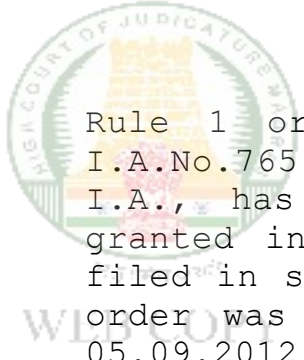
2. The suit is one for the relief of permanent injunction. The first defendant is none other than the Revision petitioner's sister. Defendants 2 and 3 are her sons. It is beyond dispute that the suit property stood only in the name of Balusamy Chettiyar. The said Balusamy Chettiyar had executed a settlement deed in the year 2000 in favour of his daughter Kamala. The said Kamala had in turn executed a settlement deed in favour of her sons, Parthasarathy and Mahendra Kumar, later. From them, the fifth defendant had purchased the suit property in the year 2011.

3. The case of the Revision petitioner is that he was not aware of the said execution of the settlement deed in favour of his sister. He would make a further claim that the property was not actually purchased by his father. Be that as it may, pending suit, the petitioner filed I.A.No.50 of 2012 seeking the relief of Interim Injunction for restraining the subsequent purchaser from putting up any construction in the suit property. The said I.A., was allowed on 05.09.2012. However, alleging that he was illegally dispossessed and the new construction had been put up over the suit property, illegally, the Revision petitioner filed I.A.No.765 of 2012 for punishing defendants 4 and 5 under Order 39 Rule 2-A of C.P.C. The said I.A., was also allowed by Order dated 18.04.2015 and sentence of imprisonment was imposed.

4. Questioning both the orders, defendants 4 and 5 filed C.M.A.No.8 of 2012 and C.M.A.No.6 of 2015 before the Sub Court, Ramanathapuram. The learned Subordinate Judge, Ramanathapuram, by the impugned Judgments dated 18.07.2017, allowed both the Civil Miscellaneous appeals. The Judgments passed by the first Appellate Court are under challenge in these Civil Revision petitions.

5. Heard the Revision petitioner who appeared as Party-in-person and the learned counsel appearing for the respondents.

<https://hcservices.courts.gov.in/hcservices/> Rule 2-A of C.P.C., can be invoked in the case of disobedience of any injunction granted or other order made under



Rule 1 or Rule 2 of Order 39. It is not in dispute that I.A.No.765 of 2012 was filed only under its provision. The said I.A., has been filed for alleged breach of injunction order granted in I.A.No.50 of 2012. Even a perusal of the affidavit filed in support of I.A.No.765 of 2012 would show that injunction order was granted in favour of the Revision petitioner only on 05.09.2012. It is not the case of the Revision petitioner that he was granted any ex-parte order of Interim Injunction earlier. But the cause of action that gave rise for filing of I.A.No.765 of 2012 admittedly arose prior to 05.09.2012. Therefore, this Court is of the view that I.A.No.765 of 2012 was clearly not maintainable. Even on the own showing of the Revision petitioner, there is no case made out for filing an application under Order 39 Rule 2-A of C.P.C. It is surprising that the Court of the first instance did not take note of this aspect of the matter. The first Appellate Court rightly set aside the Order dated 18.04.2015 passed in I.A.No.765 of 2012.

7. Likewise even according to the Revision petitioner, the property in question originally stood in the name of his father and the contesting respondents herein trace their title through the settlement deed executed by the said Balusamy Chettiyar in favour of his daughter Kamala. But she had in turn settled the property in question in favour of her sons who sold it to the contesting respondents herein. The petitioner ought to have filed a suit seeking declaratory relief also.

8. In this view of the matter, the first Appellate Court rightly held that the petitioner was not entitled to any interim relief. But then, while allowing the Civil Miscellaneous Appeals, it has been erroneously mentioned that the petitioner is not entitled to any permanent injunction. The Court below ought to have borne in mind that it was concerned only with the case of interim relief. By allowing the Civil Miscellaneous appeals in the manner in which it has done, the first Appellate Court has dismissed the suit itself. May be the suit deserves dismissal, but not in this manner. Therefore, this Court directs the trial Court to dispose of the suit in O.S.No.13 of 2012 filed by the Revision petitioner, without being influenced by any of the observations made in this Civil Revision petitions.

9. With these clarifications and observations, the Civil Revision petitions stand dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To

1. The Subordinate Judge,
Ramanathapuram.

2. The District Munsif,
Ramanathapuram.

3. The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.B.Venugopal @ Venugopalan, Party-in-person Sr.No.77601
+1cc to Mr.T.R.Jeyapalam, Advocate Sr.No.77600

PMU

VB/KAK/SAR3/23.08.2018/4P/7C

COMMON ORDER MADE IN
C.R.P. (PD) (MD) .Nos.1365 & 1366 of 2018 and
C.M.P. (MD) No.5908 of 2018
07.08.2018