



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.07.2018

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1428 of 2018 and
C.M.P. (MD) Nos.6148 & 6149 of 2018

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M.Palanisamy ... Revision Petitioner/Appellant/Respondent/
Defendant

-vs-

Subramanian ... Respondent/Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the judgment and decree passed in C.M.A.No.3 of 2018 dated 04.06.2018 on the file of the Principal Subordinate Court, Tenkasi, confirming the fair and decreetal order passed in I.A.No.252 of 2018 in O.S.No.81 of 2018 dated 02.04.2018 on the file of Principal District Munsif Court, Tenkasi and allow the Civil Miscellaneous Appeal.

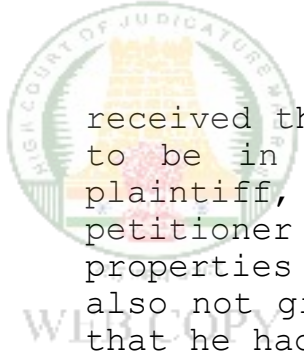
For Petitioner : Mr.M.S.Suresh Kumar

For Respondent : Mr.S.S.Thesigan

ORDER

The revision petitioner is the defendant in O.S.No.81 of 2018 on the file of Principal District Munsif Court, Tenkasi and the appellant in C.M.A.No.3 of 2018 on the file of the Principal Subordinate Court, Tenkasi. The suit was filed by the plaintiff / respondent herein for injunction, restraining the defendant from causing hindrance to the operation of his bus bearing Regn.No.TN-76-A-9995 and during pendency of the suit, the plaintiff had filed an application in I.A.No.252 of 2018, for granting interim injunction pending disposal of the suit, in which, the interim relief sought for was granted in favour of the plaintiff. Aggrieved by the same, the revision petitioner/defendant had preferred an appeal in C.M.A.No.3 of 2018, which was also dismissed by the First Appellate Court, thereby confirming the order dated 02.04.2018 passed in I.A.No.252 of 2018. Challenging both the orders, the present Civil Revision Petition has been filed.

2. The case of the revision petitioner herein is that the subject vehicle, bearing Regn.No.TN-76-A-9995 is a family property and the same is being operated from Tenkasi to Aaikudi after obtaining necessary permission from the concerned Transport Department. While so, the respondent herein, by way of an alleged oral agreement dated 12.06.2015 with his brothers, had stated to have partitioned the family properties, due to which, he had



received the subject bus as his share and the original deed is said to be in possession of one Rathinasamy / elder brother of the plaintiff, which is not true. It is the further case of the petitioner that the respondent herein had been selling the family properties without the consent of other family members and he had also not given any share in the property. The petitioner had stated that he had paid the insurance premium in respect of the vehicle and as such, the submission of the respondent that the original document of the bus is with him is denied.

3. The revision petitioner states that the respondent has been cheating his own brother and also attempting to grab the bus. The subject vehicle stands in the name of the petitioner and suppressing the said fact and with an intention to disturb the management of the bus by the petitioner, the respondent has filed the suit, in which the Trial Court has granted interim injunction against the defendant without appreciating the factual matrix and the same was confirmed by the First Appellate Court. The revision petitioner further states that though there was an admittance by the petitioner herein with regard to the unregistered partition deed dated 12.06.2015, pursuant to non-fulfilment of the condition by the eldest member of the family, the agreement did not come into force and therefore, the claim on the basis of the said agreement is baseless and unsustainable in law. Therefore, it is prayed that the orders of the Trial Court and the First Appellate Court need interference by this Court.

4. Per contra, learned counsel for the respondent / plaintiff has strenuously contended that the bus, which is the whole issue in the suit absolutely belongs to the respondent / plaintiff, which was acquired by him during partition of the joint family properties. The expenses for obtaining necessary permission for operating the bus in the route and for renewal of insurance premium were all borne by the respondent alone. He has further contended that pursuant to existence of the name of the petitioner in the document pertaining to the bus, claiming rights over the bus, the petitioner has causing disturbance to the smooth operation of the bus, thereby making hindrance to the general public. Considering the entire facts borne out by records, the Court below have granted the interim relief to the respondent, which does not warrant any interference by this Court.

5. Heard the learned counsel on either side and also perused the documents available on record.

6. A careful consideration of all related issues involved in this case would disclose the fact that it was a family dispute and it was admitted on either side that there was an oral partition deed effected amongst family members on 12.06.2015 and the dispute revolves around as to who is the real owner of the bus and to whom, the bus was allotted as a part of share. Admittedly, the suit filed by the plaintiff / respondent herein is pending and alleging



continuous restraint in the operation of the bus, the plaintiff had obtained an interim injunction during pendency of the suit. Both the parties claim that they are owners of the bus and they are in possession of requisite documents in proof of their ownership.

7. The plaintiff had filed the application under Order XXXIX Rule 1 & 2 and for the sake of brevity, the said provisions are extracted as hereunder:

"Order XXXIX: Temporary Injunctions and Interlocutory Orders

Order-XXXIX, Rule-1. Cases in which temporary injunction may be granted -

Where in any Suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.

Order-XXXIX, Rule-2. Injunction to restrain repetition or continuance of breach.-

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by Order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security, or



otherwise, as the court thinks fit."

8. It is pertinent to state here that grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no strait-jacket formula can be laid down and the grant of temporary injunction, is governed by three basic principles, i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But, at the same time, mini trial should not be conducted at the time of hearing petitions for temporary injunction, as held by the Hon'ble Supreme Court in the case of S.M.Dyechem Ltd. Vs. M/s. Cadbury (India) Ltd., reported in AIR 2000 SC 2114; and Anand Prasad Agarwalla (supra).

9. The Hon'ble Supreme Court, in yet another case in Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., reported in AIR 1999 SC 3105, was pleased to emphasize certain considerations, while hearing the application or petition for the grant of injunctions, which are as below:

- i) Extent of damages being an adequate remedy;
- ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor;
- iii) The court, while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;
- iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case- the relief being kept flexible;
- v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;
- vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."

10. In Dalpat Kumar and another vs. Prahlaad Singh and others, reported in AIR 1993 SC 276, the Hon'ble Supreme Court, while explaining the scope of aforesaid material circumstances, observed as follows:-

"The phrases 'prima facie case', 'balance of convenience' and 'irreparable loss' are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's



ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts rest eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience."

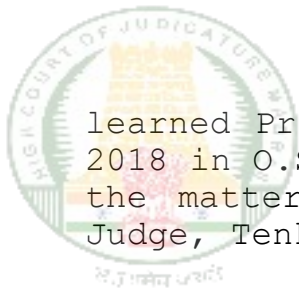
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11. It is no doubt true that the Civil Court has a power to grant interim injunction in exercise of its inherent jurisdiction even if the case does not fall within the ambit of provisions of Order 39 Code of Civil Procedure and the courts, however, have to strike a balance between two extreme positions viz. whether the petition would itself become infructuous, if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss. The delay in approaching the Court is of course a good ground for refusal of interim relief, but in exceptional circumstances, where the case of a party is based on fundamental rights guaranteed under the Constitution and there is an apprehension that suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage provided the court is satisfied that the applicant has not been negligent in pursuing the case.

12. A close scrutiny of the order of the First Appellate Court would unfold the position that it had not discussed all the basic principles enunciated under law as stated above and also has not given its anxious consideration to the material evidence. Of course, it is true that while considering the application for interim injunction, mini trial should not be conducted, as held by the Hon'ble Supreme Court, but at the same time, minimum requirements have to be fulfilled and taken into consideration, while reviewing the order of the Trial Court, which, in my considered opinion, is lacking in the order of the First Appellate Court. Therefore, this Court is of the view that the orders of both the Trial Court and the First Appellate Court are liable to be set aside so as to remit the matter back to the First Appellate Court for fresh consideration.

13. In the result,

a) the Civil Revision Petition is allowed and both the order of the learned Principal Subordinate Judge, Tenkasi dated 04.06.2018, passed in C.M.A.No.3 of 2018 and also the order of the



learned Principal District Munsif, Tenkasi, passed in I.A.No.252 of 2018 in O.S.No.81 of 2018 dated 02.04.2018, are hereby set aside and the matter is remanded back to the learned Principal Subordinate Judge, Tenkasi for re-consideration of the matter afresh;

b) the learned Principal Subordinate Judge, Tenkasi is directed to pass afresh order in C.M.A.No.3 of 2018 after considering the observations made herein-above as well as all the pros and cons of the case in a given set of facts and pass a detailed order on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order;

c) after passing order in the appeal, the concerned Trial Court shall dispose of the suit in O.S.No.81 of 2018 within a period of four months thereafter, without giving any unnecessary adjournment to either parties and the parties shall cooperate for speedy disposal within the time stipulated above;

d) It is made clear that whatever observed above is only for the purpose of deciding this petition alone and the Courts below shall deal with the issue purely on merits and in accordance with law, uninfluenced by anything stated herein-above.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

1. The Principal Subordinate Judge, Tenkasi.

2.The Principal District Munsif, Tenkasi.

+1cc to Mr.M.S.SURESH KUMAR, Advocate, SR.No.73621

C.R.P. (PD) (MD) No.1428 of 2018
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