



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

C.R.P.(PD)(MD)No.1819 of 2018

and

CMP(MD)No.7959 of 2018

WEB COPY

Maruthamalai ... Petitioner / Appellant / 2nd Defendant

Vs.

Arulanthu ... Respondent / Respondent / Plaintiff

PRAYER: Petition filed under Article 227 of Constitution of India, to set aside the order dated 13.07.2018 passed in C.M.A.No.10 of 2017 on the file of the Additional Sub Court, Pudukottai.

For Petitioner : Mr.D.Parisuthanathan

For Respondent : Mr.N.Ramesh

ORDER

O.S.No.81 of 2016 was filed by the respondent herein before the Additional Sub Court, Pudukottai seeking the relief of declaration and permanent injunction. The respondent also sought an alternative relief of recovery of possession.

2.In the suit, the respondent originally filed an Interlocutory Application seeking injunction for restraining the defendant from interfering with his peaceful possession and enjoyment of suit property. The revision Petitioner also filed a cross interlocutory application in I.A.No.857 of 2016. The interlocutory application filed by the plaintiff was dismissed as not-pressed. The application filed by the defendant was also dismissed.

3.Aggrieved by the dismissal of his interlocutory application, the revision petitioner herein filed CMA No.10 of 2017 before the Additional District Court, Pudukottai. Originally interim stay was passed in favour of the revision petitioner in the said CMA. The same was challenged by the respondent herein in CMA No.564 of 2017. The same was dismissed on 09.08.2017 and the interim order given in CMA No.10 of 2017 was affirmed. Thereafter, the plaintiff filed CRP(MD)No.2366 of 2017 to expedite the suit proceedings. In the meanwhile, CMA No.10 of 2017 was taken up by



the learned Additional Subordinate Judge, Pudukottai and the same was dismissed by order dated 13.07.2018. Questioning the same, the above Civil Revision Petition is filed.

4. Heard the learned Counsel appearing on either side.

5. The learned Counsel for the respondent submitted that since a direction has been given by this Court for expediting the suit proceedings, there is no need to interfere with the order passed in CMA No.10 of 2017. He also pointed out that not only the trial Court, the learned Subordinate Judge also has taken a view that the issue raised by the respondent in I.A.No.857 of 2014 can be thrashed out only in the main suit.

6. I am unable to agree with the said submission made by the respondent. It is seen that the plaintiff originally filed the suit only for the relief of declaration and permanent injunction. Subsequently, the said suit was amended and the alternative prayer for recovery of possession was introduced. The plaintiff filed Interlocutory Application for protecting his possession against the defendants. He withdrew the said Interlocutory Application. Therefore, these circumstances are more than enough to form a *prima facie* conclusion that I.A.No.857 of 2016 filed by the revision petitioner deserves to be allowed.

7. Hence, the impugned order is set aside and the application in I.A.No.857 of 2016 is allowed and the Civil Revision Petition is allowed.

8. Of course, the suit proceedings will have to be decided entirely independently and based on the evidence available before it. The trial Court shall not be influenced by the order of this Court allowing the Civil Revision Petition filed by the second defendant

9. With the above observation, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The Additional Subordinate Judge, Pudukottai.



2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC To MR.D.PARISUTHANATHAN, Advocate SR. NO.79689
+1 CC To MR.N.KAMESH, Advocate SR. NO. 79891

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23.08.2018

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