

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on : 06.02.2019**

**Delivered on : 13.03.2019**

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**C.R.P.(PD).No.3507 of 2018**

**and**

**C.M.P.No.19647 of 2018**

C.R.B. Suresh Babu

...Petitioner/Respondent  
Respondent/Defendant

Vs

Chintadripet Fish and Perishable  
products Traders Association  
rep.by its President G.R. Apparaj  
No.24, Arunachala Street,  
Chintadripet,  
Chennai – 600 002.

...Respondent/Appellant  
Petitioner/Plaintiff

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.10.2018 made in C.M.A.No.54 of 2018 on the file of the learned I Additional Judge, City Civil Court, Chennai, by reversing

the fair and decretal order dated 18.07.2018 made in I.A.No.17386 of 2017 in O.S.No.6473 of 2017 by the learned IV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V. Lakshminarayanan  
for Mr.N. Ramesh

For Respondent : Mr.T.V. Ramanujam  
Senior Counsel  
for M/s.C.K. Vishnu Priya

**ORDER**

The above Civil Revision Petition is filed challenging the order passed by the learned I Additional Judge, City Civil Court, Chennai, in C.M.A.No.54 of 2018 by which the learned Judge has reversed the order passed by the learned IV Assistant Judge, City Civil Court, Chennai, in I.A.No.17386 of 2017 which has been filed for an injunction, restraining the defendant/respondent from interfering with the peaceful possession and enjoyment of the suit schedule properties along with the basic amenities like electricity and water connection by the applicant/plaintiff.

2.The learned IV Assistant Judge, City Civil Court, Chennai, had dismissed the said application and the said order was taken up by way of an appeal to the learned I Additional Judge, City Civil Court, Chennai, in C.M.A.No.54 of 2018 by the unsuccessful applicant/plaintiff and the learned Judge had thereafter granted injunction as prayed for.

3.The facts which are necessary to appreciate and dispose of the order under revision are hereinbelow narrated:

The plaintiff, who is an Association represented by its President, had filed the suit O.S.No.6473 of 2017 on the file of the learned IV Assistant Judge, City Civil Court, Chennai, for a bare injunction. The suit was filed with reference to an extent of 1880 sq.mtr. and 1997 sq.mtr. totally 3877 sq.mtr. situate at D.No.24, Arunachalam Street and Swamy Naicken Street, Chinthadripet, Chennai, comprised in Survey Nos.735/47 and 735/55. It is the case of the plaintiff that for nearly two

centuries, the property comprised in Survey Nos.735/47 and 735/55 was being used as market. The President of the plaintiff Association would contend that on 06.05.1990, the Association represented by its Office Bearers had entered into an Agreement with the defendant/revision petitioner herein and his brother Ramesh Babu, sons of C.R.B. Balusamy, with reference to the suit schedule property and an other extent of 1997 sq.mtr. in the two Survey Numbers mentioned above. In the Agreement, the two brothers had admitted that they were not in the habit of receiving receipts in the last decades and that henceforth, they would issue receipts to the daily/weekly/monthly vendors of the market. It was also agreed by the brothers that it is only those vendors who have been identified by the plaintiff Association, who would be inducted as tenants and that the revision petitioner and his brother would not induct any new tenant. That apart, the Agreement also stipulated that in the event of the petitioner deciding to lease or sell the property then the choice of first refusal or acceptance should be given to the members of the

plaintiff Association. Thereafter, the revision petitioner and his brother had effected a Partition in which the said property was allotted to the share of the revision petitioner.

4.It is the further case of the plaintiff that on 11.05.1991, Ramesh Babu, the brother of the revision petitioner, died and his legal representatives were approached by the plaintiff Association for selling their shares to the plaintiff Association and an Agreement of Sale was also executed amongst them and an advance of Rs.25,00,000/- was paid. Despite several requests to the said Ramesh Babu's legal representatives to execute the Sale Deed, they failed to comply with the request and started evading the petitioner. The Association learnt that they are taking steps to sell the same to some other persons. The plaintiff Association had therefore filed C.S.No.374 of 2017 on the file of this Court for Specific Performance and had also obtained an order of interim injunction, restraining them from alienating the property to any other person in O.A.No.530 of 2017.

5.The plaintiff would contend that all of a sudden, the revision petitioner herein when asked to issue receipts for the rents paid, turned around filed a complaint accusing the Association and its members of trespassing into the suit schedule properties and also stating that one Imran Khan is the present owner and not Ramesh Babu and his legal heirs. The plaintiff Association had also come to learn that the revision petitioner/defendant was attempting to evict the members of the Association and trying to occupy those portions, and therefore, the suit and the application subject matter of the revision has been filed for an *ad interim* injunction.

6.The revision petitioner/defendant on entering appearance in the suit had filed their counter *inter alia* contending that the description of the property was wrong since the actual measurements of two Survey Numbers had not been given and also that even as earlier as in the year 1959, their father had

settled the respective portions on the revision petitioner and his brother. The revision petitioner would contend that they had been collecting the rents and all of a sudden in May 2017, the plaintiff Association which was formed in 1987 started using their muscle power to collect the rents directly from the occupiers and this constrained the revision petitioner to approach the Police authorities. He would also contend that the respondent has been maintaining all the shops to date and that renovation has been done by him.

7. The learned IV Assistant Judge, City Civil Court, Chennai, by her order dated 18.07.2018 had dismissed the application on the following grounds:

(1) The plaintiff Association did not give the lease amount as agreed and had further inducted unauthorised persons.

(2) From May 2017, the plaintiff prevented the defendant/revision petitioner from collecting the rents.

(3) There was no clarity in the pleadings of the plaintiff as to

what was the mode of disbursement of rents by the members of the plaintiff Association to the defendant.

(4)The objections were only with reference to the Lease Deed in favour of Imran Khan which was only a portion of the property measuring 208 Sq.ft and 268 sq.ft. Though the petitioner Association was aggrieved by Imran Khan's action, they have not chosen to implead him.

(5)The list of members and the persons who are in occupation of the premises had not been detailed.

(6)The original documents had not been filed and it was only a xerox copies that had been produced.

(7)The complaint was only against Imran Khan and not the revision petitioner/defendant.

Therefore, the learned Judge would contend that there was no cause of action against the revision petitioner/defendant and therefore, had dismissed the said application.

8.Challenging the said application, the plaintiff herein had filed C.M.A.No.54 of 2018 on the file of the learned I Additional Judge, City Civil Court, Chennai. Along with the said appeal, the plaintiff had also filed C.M.P.No.896 of 2018 seeking permission to produce the additional documents by invoking the provision of Order 41 Rule 27 of the Code of Civil Procedure. The learned I Additional Judge without hearing the said application along with the appeal proceeded to pass orders to take on file the documents, all of which are xerox copies, which has been strongly objected to by the plaintiff. The learned Judge has passed the orders stating that the learned Judge had accepted the contention of the plaintiff that they were unable to produce the said documents since it was under the custody of the defendant, who had locked in the office room. Such a statement had not been made in the affidavit filed in support of the petition under Order 41 Rule 27 of CPC.

9.The learned Judge proceeded to allow the said application stating that the documents were subject to proof and relevancy. While considering the appeal C.M.A.No.54 of 2018, the learned Judge had allowed the application on the ground that the xerox copies of the documents would show that the original documents had been produced before the trial Court. Though such a pleading has not been taken, the same has been reflected in the order of the learned IV Assistant Judge, City Civil Court, Chennai. The learned Judge also was of the opinion that the petitioner was an Association and the Bye-Laws of the Association provides that it should be in the President of the association who has to file the suit on behalf of the Society and therefore, considering the fact that the suit has been filed by the President it was in keeping with the terms of the Bye-Laws. The arguments with reference to the non impleading of the said Imran Khan was found to be irrelevant by the Court since he is not a party to the application. It can only be presumed that the respondent has only attempted

to interfere in the peaceful possession and enjoyment of the suit property by the plaintiff. The learned Judge therefore proceeded to set aside the order and allowed the appeal. Challenging the said order, the defendant is before this Court.

10. Heard Mr. Lakshmi Narayanan for Mr. N. Ramesh for the revision petitioner. The main fulcrum of the arguments on the side of the revision petitioner is that the market is not situate in the property belonging to the revision petitioner and that the market is situate in the portion allotted to his brother Ramesh Babu. He would further argue that the respondents have deliberately not produced the original all of which are in their custody and he would also point out the prevaricating stand taken by the respondents with reference to the original Agreement dated 06.05.1990. In the suit, the plaintiff/respondent herein would contend that the original documents are in the custody of the defendant/revision petitioner herein. Along with the suit, they have filed a xerox copy of the

said Agreement, whereas in the affidavit filed in support of C.M.P.No.896 of 2018, the respondent would contend that all the plaint documents and original documents listed in the list of documents were submitted before the trial Court and arguments were advanced based on the said orders. In fact, their prayer was only to produce the additional documentary evidence. In Application No.289 of 2013 in C.S.No.640 of 2018 which was the application moved by the respondent Association for filing additional documents, the President who has sworn to the affidavit would state that when the suit was filed he could not locate certain documents and it was only now when he was searching for papers pertaining to certain transactions between the respondent and the revision petitioner that he had located the papers and one of the documents was so called the original copy signed by both the parties. However, when the arguments were going on in C.M.P.No.896 of 2018, the plaintiff Association would contend that all the documents are in the office room which has been locked by the revision petitioner and therefore,

they do not have any access to the same. The learned counsel therefore would argue that the very fact that, at each juncture different stands has been taken by the plaintiff, would clearly establish the fact that they had not made out *prima facie* case for granting an order of injunction. He would further argue that the entire complaint revolved around the induction of Imran Khan as a tenant and the suit filed for bare injunction without impleading the said Imran Khan was bad for non joinder of necessary parties. He would argue that the observation of the learned I Additional Judge, City Civil Court, Chennai, that since the said Imran Khan was not added as a party in the application, he cannot be sought to be made a party in the appeal was a totally erroneous view taken by the Appellate Court.

11. The learned counsel would further argue that the suit for an injunction filed by the Association was not maintainable since the individual rights to the property was sought to be established and therefore, the actual tenants of the various portions ought to

have instituted the suit and not the plaintiff Association. He had relied upon the following Judgments in support of his arguments:

- a. 1971 AIR 1070  
*Jupudi Kesava Rao v. Pulavarthi Venkata Subbarao and others*
- b. (2003) AIR (SCW) 4824  
*Illachi Devi (D) by LRs and others v. Jain Society, Protection of Orphans India and others.*
- c. (2010) AIR (SCW) 4222  
*Mumbai International Airport Pvt. Ltd., vs. Regency Convention Centre and Hotels Pvt. Ltd. And others*
- d. (2010) 8 Supreme Court Cases 423  
*Shalimar Chemical Works Limited v. Surendra Oil and Dal Mills (Refineries) and others*
- e. 2012 (6) CTC 194  
*1.Lalitha 2.Minor Nithya, rep.by next friend mother v. 1.Singaram 2.Angalam 3.Jaya 4. Manimaran*
- f. 2013-2-L.W.93  
*Manikannan v. Sambandam*
- g. (2014) 10 Supreme Court Cases 473  
*Anvar P.V. v. P.K. Basheer and others*
- h. (2010) 3 CALLT 79  
*SHA-SAN Infrastructures Pvt. Ltd., vs. Thakur Corner Byabsayee Kalyan Samity and others*

12.Per contra, Mr.T.V. Ramanujam, learned Senior Counsel appeared on behalf of Mr.C.K.Vishnu Priya, would contend that the Agreement was with reference to the properties situate both in Survey No.735/47 as well as Survey No.735/55 and having signed on the dotted line, the revision petitioner is estopped from now contending that the Fish market is within the property allotted to his brother's share in Survey No.735/55. He would further argue that since the Agreement had been entered into by the Association and it was the terms of the Agreement that was sought to be now violated by the revision petitioner/landlord, the Association for and on behalf of the Members has filed the suit.

13.The learned counsel would therefore submit that even in the counter filed in I.A.No.17386 of 2017, the revision petitioner has admitted that both the properties were given on lease, since in the counter the revision petitioner had contended that he had been collecting the rents from May 2017 and thereafter, the

respondent/plaintiff had flexed their muscles to collect the rents. He would further point out the statement of the defendant in the counter that it was the plaintiff, who had maintained the shops and effected the necessary renovation works and therefore, the learned Senior Counsel would contend that the defendant cannot now come forward with a new case that the suit property was not the property in which the Fish market was situate.

14. Heard the learned counsel appearing on either side and perused the material on record.

15. From the records, it is seen that the plaintiff/respondent has come forward with the case that under the Agreement dated 06.05.1990 that they had continued a long existing lease with reference to the suit schedule market and the Agreement clearly stated that it was with reference to both the properties situate in Survey Nos. 735/47 and 735/55, measuring an extent of 1880 sq.mtr. and 1997 sq.mtr, respectively. The revision petitioner

nowhere in his counter stated that the market does not exist in these suit properties. On the contrary, the revision petitioner had gone on to contend that under the Agreement entered into between themselves and the Association, the rents in respect of the suit property were the market was functioning would be paid to the revision petitioner directly and that he has been maintaining the market by making necessary renovation etc., Having made a categoric stand that the suit property is the property in respect of which he had been collecting rents from May 2017, the revision petitioner cannot now turn around and contend that the market in question is not situate in the suit schedule property.

16. It is necessary to extract the counter that has been filed by the revision petitioner. In Paragraph 8, the revision petitioner has contended as follows:

*"The respondent submits that the shops and the market is existing for nearly two centuries and all the*

*shops were running in a very smooth manner. The petitioner registered the said association in 1987 and started collecting money from all the shops and showing his muscle power. It must be his muscle power whose shop occupiers do not co-operate with him for making money for running the shops. The respondent submits that no place was allotted to the association and it is not specified in the Agreement any allotment of the space for the association. The petitioner himself occupied a shop and started threatening the respondent. The respondent submits that he obeyed as of the Agreement and approached him many times to evict the illegal possessed shop and also stated that these shops inside the market is let out only for the shops as of the Agreement and the petitioner had violated the Agreement and illegally possessed the shops, but the petitioner threatened the respondent with his rowdy elements.”*

In para 10, he has submitted as follows:

*"10...The respondent submits that the respondent was collecting the rent directly till May 2017 and the respective receipt was issued to them directly as of the agreement, but suddenly from May 2017, the petitioner herein started collecting the rent illegally by violating the agreement and also threatened the shops inside the market not to pay rent to the respondent, since the petitioner have vilated the agreement and started collecting the rent illegally with no option the respondent approached the Police Station and lodged a complaint stating that the Association is illegally collecting the rent and the petitioner was called for the enquiry, since the petitioner was highly influence no action was taken against the petitioner, admittedly the petitioner have sent a communication to the respondent on 10.01.2018 stating that he have collected three*

*months rents, this communication of the petitioner have very clearly shows that the petitioner have violated the agreement.”*

17. Therefore, a reading of the above two statements made in the counter of the respondent signed by him would clearly establish the facts that there is a market in existence in the suit property and also there is an admission about the Agreement. The Interlocutory Application which is the subject matter of the revision petitioner is for an ad-interim injunction, restraining the defendant/revision petitioner from interfering with the peaceful possession and enjoyment of the suit property by the Members of the Plaintiff Association.

18. In my view, the above admissions of the revision petitioner in his very counter affidavit would *prima facie* prove that the members of the Association are in possession of the suit schedule property and therefore, there is no infirmity in the order

passed by the learned I Additional Judge, City Civil Court, Chennai. The other allegations with reference to the *locus standi*, non joinder, etc., are the matters which have to be considered in the suit during the trial. When considering the applications for *ad interim* injunction, the Court is only concerned with the *prima facie* case and the *prima facie* case having been established by the respondent's own admission, the orders of the learned I Additional Judge, City Civil Court, Chennai does not suffer from any infirmity.

This Civil Revision Petition is liable to be dismissed and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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**13.03.2019**

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Index : Yes/No  
Internet : Yes/No  
Speaking order /Non speaking order  
mps

**P.T. ASHA, J,**

mps

To

1.The I Additional Judge,  
City Civil Court,  
Chennai.

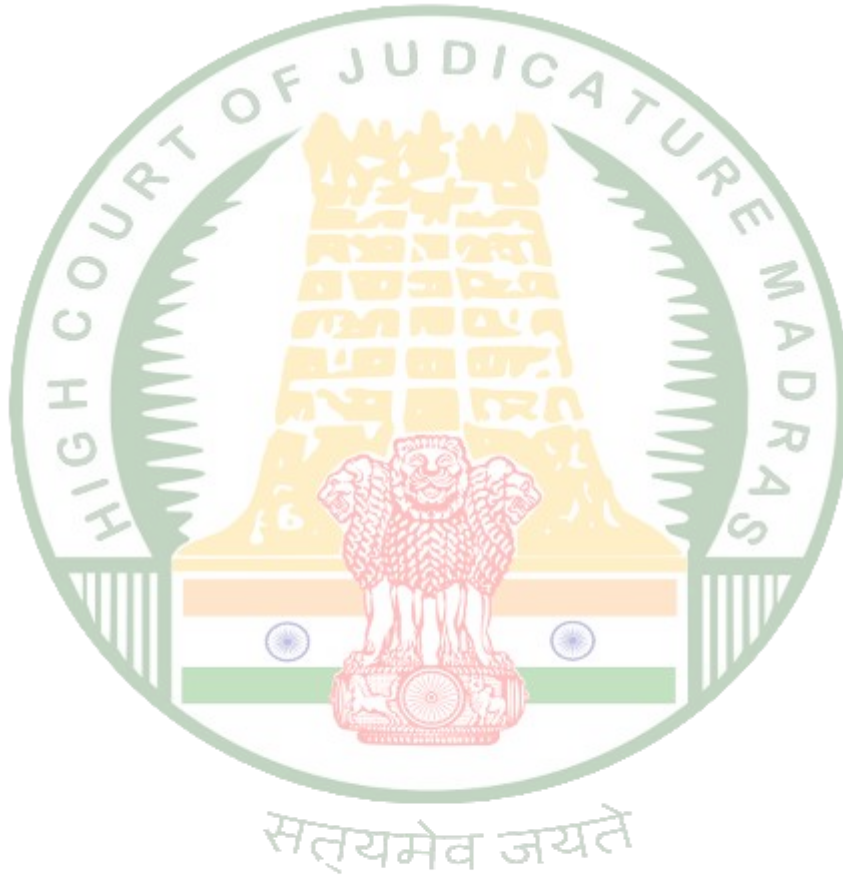
2.The IV Assistant Judge,  
City Civil Court,  
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**Pre-Delivery Order in**  
**C.R.P.(PD).No.3507 of 2018**  
**and**  
**C.M.P.No.19647 of 2018**

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