

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).No. 2242 of 2018

and

C.M.P.No. 16180 of 2018

M.Lakshmanan

...Petitioner

Vs.

1.Kalaiselvi

2.L.Ramanathan

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.962 of 2017 in O.S.No. 554 of 2015 dated 26.02.2018 on the file of the V – Additional District Munsif, Coimbatore.

For Petitioner : Mr.C.Deivasigamani

For Respondents : No appearance

R2 to R5 – Given up

ORDER

The second defendant in O.S.No.554 of 2015 has come up with this revision challenging the dismissal of his application for rejection of the

plaint on the ground that it is an abuse of process of Court and that it is barred by law.

2. The suit was laid by the plaintiff against the defendants seeking a permanent injunction restraining them from interfering with her possession of the property. In the plaint itself it is stated that the defendants were partners and they were running business in the name and style of “Best Medicals” with the first defendant, *who is son of the plaintiff*, having 75% share and the second defendant having 25% share. The business was being carried on in the premises belonging to the plaintiff. It is stated since the business was not profitable, the defendants had decided to close the business from the month of January 2015 and the possession was also handed over to her on 07.03.2015.

3. According to the plaintiff, though the defendants agreed to clear the stocks that was in the premises within two days, the stock was not cleared as the second defendant did not co-operate with the first defendant to clear the stock and the second defendant is attempting to interfere with the

possession of the plaintiff. Curiously, along with the plaint, an application for appointment of Commissioner was filed seeking to open the premises and to take inventory of the stock that was available and hand over the same to the defendants. Unfortunately, an Advocate Commissioner came to be appointed and the Commissioner visited the property. Despite objections by the second defendant, who is a partner in the business, the Commissioner took inventory of the stocks and handed over the stocks to the first defendant and thereby, executed a decree for delivery of possession by way of an interim order of appointment of a Commissioner.

4. I have heard. Mr.C.Deivasigamani, learned counsel for the petitioner. Despite notice, none appears for the respondents.

5. This case, in my considered opinion, reflects the extent of abuse of process of Court that is prevalent in the Courts below. The landlord sues her son and his partner for permanent injunction, obtains an order for a Commissioner to take inventory, the son of the landlord, being a partner actively colludes with the landlord and hands over the keys to the landlord

which is inturn handed over to the Commissioner by the landlord. A situation is created as if the landlord is in possession of the property and an inventory of the medicines that were stored in the premises was taken by the Commissioner and the same was handed over to the first defendant, the colluding partner. Though the revision is only against an order rejecting an application for rejection of the plaint, the facts that are demonstrated leave no doubt, that the process of Court has been abused by the landlord and the first defendant / son in active collusion with the Advocate Commissioner appointed by the Court.

6. The Trial Court, in my considered opinion ought not to have appointed an Advocate Commissioner in a case of this nature. I find that the landlord has in effect obtained an order of eviction against the tenant and executed it also by way of a suit for permanent injunction and appointment of Commissioner in the said suit. If I reject the plaint now, the petitioner will be left high and dry.

7. Therefore, while dismissing the civil revision petition, I leave it open to the petitioner to file a counter claim seeking restoration of possession in the very suit itself. The Trial Court will do well to consider the claim of the petitioner in the proper perspective and dispose of the same so that the majesty of law is restored.

8. This civil revision petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.



30.09.2020

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To:

The V – Additional District Munsif,
Coimbatore.

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R.SUBRAMANIAN, J.

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