

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 07.11.2019

Pronounced On : 06.02.2020

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.417 of 2014
and M.P.No.1 of 2014

M.L.Altafar Rahman,
Rep. By its Power Agent

.. Petitioner

Vs

K.H.Ameenur Rahman

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the Fair and Decreetal order dated 08.01.2014 made in CMA No.6 of 2013 on the file of the Subordinate Judge, Vanniyambadi and confirming the order dated 10.06.2013 passed in IA No.280 of 2008 in O.S.No.158 of 2008 on the file of the learned Principal District Munsif, Ambur.

For Petitioner : Mr.N.Manokaran
for Mr.P.Krishnan
For Respondent : Mr.K.Umar

ORDER

This Civil Revision Petition is directed against the order dated 08.01.2014 made in CMA No.6 of 2013, on the file of the learned Subordinate Judge, Vaniyambadi, Vellore District.

2. Brief facts leading to the filing of this petition are that the revision petitioner is the defendant in OS No.158 of 2008 (originally O.S.No.17 of 2005). The respondent herein as a plaintiff filed the above suit against the petitioner herein, seeking the relief of permanent injunction restraining the defendant/petitioner herein and his men and agents and servants, from interfering with his peaceful possession and enjoyment of the suit scheduled non residential premises, except under due process of law and for the costs. Alongwith the suit, he filed an interlocutory application in IA No.280 of 2008 under Order XXXIX Rule 1 and 2 of CPC and prayed to pass an order of ad interim injunction. After affording an opportunity to the petitioner herein, the learned District Munsif, Ambur, by order dated 10.06.2013, had allowed the application.

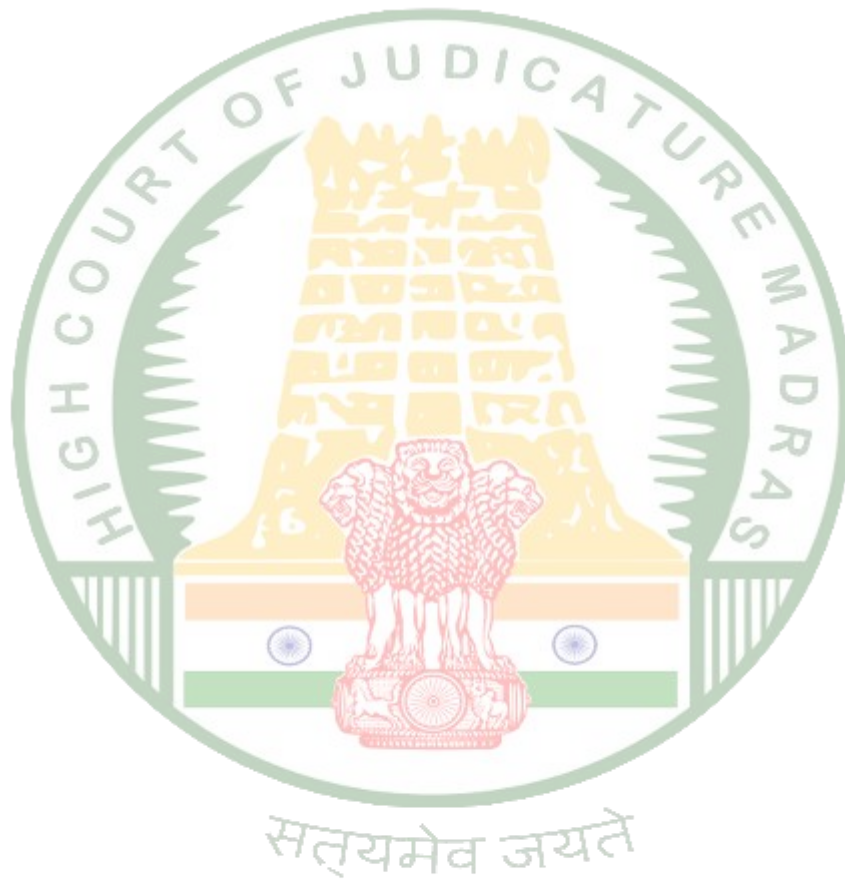
3. Aggrieved over the same, the petitioner herein preferred a Civil Miscellaneous Appeal in CMA No.6 of 2013 on the file of the Subordinate Court, Vaniyambadi. After elaborate enquiry by order dated 08.01.2014, the learned Subordinate Judge, Vaniyambadi, had dismissed the appeal filed by the petitioner herein and confirmed the order passed by the learned District Munsif, Ambur. Being aggrieved over the said findings, the petitioner / defendant is before this Court with the present Civil Revision Petition.

4. For the sake of convenience the parties are referred to as per their litigative status before the trial Court in I.A.No.280 of 2008.

5. Brief averments made in the affidavit filed in support of the petition filed by the petitioner is as follows:

(i) The petitioner is in the occupation of suit scheduled non residential premises of the respondent and carrying on business in the name and style of M/s.HRA Leather Exports. Originally, he is paying a monthly rent of Rs.22,500/- and the same is increased to the tune of Rs.24,187.50p. The petitioner is very regular and prompt in payment of monthly rents. The respondent often requested and forced the petitioner to vacate and hand over the possession of the suit scheduled property.

(ii) On that occasion, the petitioner made a submission before the respondent that the machineries worth about several lakhs have been installed in the suit property, further a sum of Rs.20 Lakhs has to be collected from the customers and hence in the said situation it is not very easy to vacate the suit scheduled property, immediately. Thereafter, after hearing the same, the respondent made arrangements to evict the petitioner by unlawful means.



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(iii) On 27.01.2005, the respondent came alongwith his henchmen, agents and attempted to interfere with the petitioner's peaceful possession and enjoyment of the suit scheduled property. In fact the Essam Tannery Company building is leased out to the petitioner for carrying the business under the name and style of HRA Leather Exports.

(iv) On 27.01.2005 with great difficulty the petitioner prevented the respondent from committing the act of trespassing into the suit scheduled property. Unless the respondent is restrained by an order of injunction, a great prejudice will be caused to the petitioner. According to him, he shall be evicted only by due process of law.

6. Resisting the claim made by the petitioner, the respondent filed a counter and states as follows:

(i) The averments contained in the affidavit filed in support of the petition are all false. In fact the petitioner is a tenant under the respondent from 2002 August. He is irregular in payments. He constructed a superstructure and altered the suit scheduled property and thereby, the value of the suit scheduled property was reduced. The petitioner sublet the premises without getting permission from the respondent, for which a case has been pending before the learned Principal District Munsif, Ambur.

(ii) After filing of the suit, a petition has been filed by the respondent in RCOP No.13 of 2006 in which, the petitioner has appeared and filed his counter affidavit. The petitioner is a willful defaulter. On 09.04.2008 itself, in the presence of panchayatar, the petitioner vacated the suit scheduled property and handed over the possession of the suit property to the respondent, for which a document has been executed. As of now, the petition mentioned property is in the possession of respondent.

(iii) After obtaining the possession from the petitioner the same was leased out to one Tanveer S/o.Nissar Ahmed. As of now, the said person is the tenant under the respondent in respect to the suit scheduled property from 28.04.2008. The electricity bill has also been paid by the respondent. The petition filed by the petitioner becomes infructuous and not maintainable.

7. Based on the above pleadings, the learned District Munsif, Ambur conducted an enquiry. During the time of enquiry, none of the witnesses have been examined on the side of the petitioner. Only documents have been marked as Ex.P1 to P62. On the other hand three witnesses have been examined on the side of the respondent as RW1 to RW3 and six documents are marked as Ex.R1 to R6.

8. Having considered all the materials placed before him, the learned District Munsif, Ambur by order dated 10.06.2013 allowed the application in favour of the petitioner. Aggrieved over the same the respondent, has preferred an appeal in CMA No.6 of 2013 and vide order dated 08.01.2014, the learned Subordinate Judge, Vaniyambadi, confirmed the order dated 10.06.2013, passed by the learned District Munsif, Ambur and dismissed the appeal.

9. Aggrieved over the same, the respondent is before this Court with the present Civil Revision Petition.

10. The first and foremost contention raised by the respondent is that though, at the time, when the suit was filed, an order of interim injunction is granted, subsequently, on 07.03.2005, the same was not extended. Accordingly, granting an order of interim injunction in favour of petitioner is not valid in law. In otherwise, the question of possession has to be decided only at the time of trial.

11. Per contra, the learned counsel appearing on behalf of the petitioner, would contend that once an interim order is granted, though it was not extended, it deemed to be extended till the disposal of the application. Only on the said circumstances, the application filed by the

petitioner before the trial Court was allowed and thereafter ad-interim injunction already granted was made absolute through the concurrent findings of the Courts below.

12. It is the further contention of the petitioner that, as a lessee, he is in the lawful possession of the suit scheduled property and therefore, praying for the relief to grant an order of injunction restraining the respondent, from interfering with his peaceful possession and enjoyment of the suit scheduled property, until he is evicted by due process of law, is nothing but a lawful act of petitioner.

13. Upon considering the submission made by the learned counsel appearing on either side, it is not in dispute that before the trial Court, the petitioner, filed an application only for the relief of granting an order of interim injunction, till the disposal of suit. In fact the main suit has been filed for the relief of permanent injunction. In the said circumstances, it is necessary to see the judgment of our Hon'ble Apex Court in ***Rame Gowda (dead) by LRs. Vs. M.Varadappa Naidu (Dead) by LRs and another***, reported in **2004 (1) SCC 769**, wherein our Hon'ble Apex Court has held as follows.

“In India persons are not permitted to take forcible possession; they must obtain such possession as they are

entitled to through a Court. The person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force.”

14. Now, in the said circumstances, for availing the relief of interim injunction, the person who has asked such relief has to prove the prima facie case that he is in the lawful possession, subsequently, he has to prove the balance of convenience and irreparable loss. In this regard, before the trial Court, the specific case of the respondent is that, on 09.04.2008, in presence of Panchayatar, the petitioner after executing the settlement deed, handed over the possession of the suit scheduled property.

15. Denying the same, before the trial Court, to prove his possession, on the side of the petitioner, 29 documents were marked as Ex.P1 to P29. Infact the said documents are all the receipts in respect to the payment of rent to M/s.Essam Tanning Company. Further, the demand notices issued

by Vaniyambadi Tanners Enviro Control Systems Limited to the petitioner, were marked as Ex.P31 to Ex.P33, which would prove the fact that the petitioner is in the possession of the suit scheduled property till 27.07.2007. Bills of various dates, marked as Ex.P41 to P50, are also in support of the petitioner that he is in possession of the suit property.

16. In the said circumstances, the only issue remains to be decided is whether on 09.04.2008 the petitioner vacated the suit scheduled property or not.

17. In this regard, the learned counsel appearing on behalf of the respondent contended that before the trial Court the settlement deed dated 09.04.2008 executed for handing over possession by petitioner was marked as Ex.R1 and the same will prove the respondent's possession. In the said occasion, on going through the said document, it is seen that for executing the said document the stamp papers were purchased on 07.12.2006. Thereafter only on 09.04.2008 the said stamp papers were used for executing the said disputed document. Though RW1 to RW3 gave evidence in support of the said document, the same cannot be accepted for the reason that respondent has used the said stamp paper only on 09.04.2008, after a long gap of two years, from the date of purchase. On the other hand, in respect to the said document, in 2007 itself the

petitioner has filed a private complaint [Ex.P39], in which he made allegation that the said stamp papers were handed over to revision petitioner, in the year of 2007 itself.

18. Now, on considering the submission made by the learned counsel appearing on behalf of the petitioner, it is true Ex.P39 reveals the fact that in 2007 itself, the petitioner herein has filed private complaint against the respondent, in which he contended as above. The said circumstances, create a doubt as to whether the Settlement deed dated 09.04.2008 [Ex.R1], is executed as alleged by the respondent, or not.

19. It is the further case of the respondent that after handing over the suit scheduled property, by the petitioner, the same was leased out to one Mr.Tanveer Ahmed. Though, the case of the respondent is as above, in order to prove the same, no lease deed alleged to be executed between the respondent and Mr.Tanveer Ahmed has been exhibited before the trial Court. Moreover, no rent receipt has been produced on the side of the respondent, to prove that the said Mr.Tanveer Ahmed, is a tenant.

20. Another aspect yet to be decided in this matter is that on 26.06.2008, the Taluk Executive Magistrate and Tahsildar, Vaniyambadi, has passed an order to maintain status quo. The said proceedings is marked as

Ex.P60. In the said order, the party to the proceedings are cited as Thenveer Ahmed and petitioner. Therefore, it is clear that on that date i.e on 26.06.2008, Tanveer Ahmed has not entered into the possession of the suit scheduled property. In fact after the alleged date on which the petitioner handed over the possession, i.e. 09.04.2008, the petitioner lodged a complaint before the police under Ex.P62. The said complaint reveals the fact that on 31.03.2008 itself, the respondent and others wrongfully entered into the possession of petitioner and stolen away the properties. Another one aspect is that, for the said occurrence, a case has been registered, based on the order passed by the Magistrate.

21. Moreover, it is not in dispute that the respondent has filed a rent control original petition in RCOP No.13 of 2006 for the relief to evict the petitioner from the suit scheduled property. The said case was proceeded beyond the date of 09.04.2008. If really the petitioner vacated the suit scheduled property on 09.04.2008, there is no necessity for the respondent to proceed with the said RCOP beyond 09.04.2008. The said circumstances has also created a doubt whether the alleged contention raised by the respondent is true or not.

22. More than that, in the main suit, the respondent has filed his written statement on 21.04.2008. If really the petitioner vacated the

premises on 09.04.2008, definitely, it would have been reflected in the written statement filed by the respondent. But, in the written statement filed by the respondent there is no averments that on 09.04.2008 itself, the petitioner, vacated the suit scheduled property.

23. The next submission made by the learned counsel appearing for the respondent is that while at the time of disposing the Civil Miscellaneous Appeal, the learned Subordinate Judge, Vaniyambadi, has disposed of an interlocutory Application viz., I.A.No.10 of 2013, which was filed under Order 41 Rule 27 CPC. While at the time of passing the order, the learned Subordinate Judge, Vaniyambadi, has held that for deciding CMA No.6 of 2013, the said documents are necessary and ordered to receive the original documents alone, which were enclosed alongwith the petition filed in IA No.10 of 2013. Though the said order is in favour of the respondent, the received documents have not been exhibited and taken into consideration for deciding the issue as in whose possession the suit property is available.

24. Per contra, the learned counsel appearing on behalf of the petitioner would contend that though it was ordered by the Court below to receive the original documents, while at the time of disposing the CMA No.6 of 2013, it has been decided by the Court below that the said documents

ordered to be received as additional documents, are all subsequent to the filing of the suit. Hence, the same cannot be taken into account for deciding the issue involved in the Civil Miscellaneous Appeal. Accordingly, he prayed to dismiss the Civil Revision Petition.

25. On considering the rival submissions, made by the learned counsel appearing on either side, it is true that on 08.01.2014, while at the time of disposing the CMA No.6 of 2013, the learned Subordinate Judge, Vaniyambadi, disposed IA No.10 of 2013, which was filed under Order 41 Rule 27 for receiving the additional documents. Ofcourse, the said application is partly allowed and ordered to receive the original documents which was enclosed alongwith the said application. However, in the impugned order the learned Subordinate Judge, Vaniyambadi, has not stated anything about the details of documents, which were received for deciding the Civil Miscellaneous Appeal. Hence, for the said reason alone, the order passed in Civil Miscellaneous Appeal, is liable to be set aside. However, since the revision is filed against the interim order passed in the year 2013, if the impugned order is set aside, it will cause further inconvenience in disposing the suit, since the suit pertaining to the Civil Miscellaneous Appeal, has been filed on 08.02.2005. The cause of action for the suit arose before 2005 and the relevancy of additional documents, cannot be taken into account for considering the possession of the suit

property in the year of 2013. In fact, the additional documents required to be received are all subsequent to the suit.

26. Therefore, in all aspects, the document relied on by the respondent is not in his favour. In otherwise, the documents relied on by the petitioner before the trial Court has proved his settled possession.

27. The learned counsel appearing on behalf of the respondent, would rely on the judgment of our Hon'ble Apex Court in **Makers Development Services Pvt. Ltd., Vs. M.Visvesvaraya Industrial Research & Dev. Centre**, reported in 2012 (2) LW 103, and contend that while at the time of granting the interim order of injunction, the Court must also take into consideration of the conduct of the parties. Further, he relied on the judgment of this Court in **Periyasamy, S/o.Muthu Gounder, Arumugampalayam, Kadapparai Village, Karur Taluk Vs. Kandasamy, S/o.Muthusamy Gounder, Arumugampalayam, Kadapparai Village, Karur Taluk & 4 Others**, reported in 2008 (3) LW 621, and made submission that injunction being the discretionary form of relief, the same may not be granted *ipso facto* for mere asking for.

28. Further the learned counsel appearing on behalf of the respondent, relied on the judgment of our Hon'ble Apex Court in

Thiruvengadam Pillai Vs. Navaneethammal and Another, reported in 2008 (4) SCC 530, and made submission that the date found in the settlement deed cannot be taken into account for considering the averments made in the document. In this regard in the judgment relied on by the respondent our Hon'ble Apex Court has held as follows:

“14. If a person wants to create a back-dated agreement, the first hurdle he faces is the non-availability of stamp paper of such old date. Therefore tampering of the date of issue and seal affixed by the stamp vendor, as also the entries made by the stamp vendor, are quite common in a forged document. When the agreement is dated 5.1.1980, and the stamp papers used are purchased in the years 1973 and 1978, one of the possible inferences is that the plaintiff not being able to secure an anti-dated stamp paper for creating the agreement (bearing a date prior to the date of sale in favour of second defendant), made use of some old stamp papers that were available with him, to fabricate the document. The fact that very old stamp papers of different dates have been used, may certainly be a circumstance that can be used as a piece of evidence to cast doubt on the authenticity of the agreement. But that cannot be a clinching evidence. There is also a possibility that a lay man unfamiliar with legal provisions relating to stamps, may bona fide think that he could use the old unused stamp papers lying with him for preparation of the document and accordingly use the old stamp papers.”

29. Now relying on the principle set out by our Hon'ble Apex Court, it is true only because of the reason that the stamp paper was purchased

before the date on which the alleged execution was performed, the same cannot be accepted to hold that the alleged agreement is false one.

30. But, here it is a case, that the respondent only by relying on the said document made a submission that as per the said document the possession of the suit property was handed over to him on 09.04.2008 itself. In the said circumstances Ex.P39, would go to show that the alleged stamp paper used for the execution of the said settlement deed was handed over to the respondent. So the said circumstances create a doubt whether Ex.R1 is genuine or not.

31. In the judgment in *Maria Margarida Sequeira Fernandes and Others Vs. Erasmo Jack De Sequeira (Dead) through LRs*, reported in 2012 (5) SCC 370, our Hon'ble Apex Court has held about the *due process of law*, as follows:

“79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.”

32. Considering the verdict of our Hon'ble Apex Court, in this case, if really both the parties are interested in proceeding with the case with real intention, it is very easy for them to settle the dispute before the trial Court itself. But after filing the written statement before the trial Court both of them have come up to this Court. In fact, it is very easy for the respondent to prove the possession, before the trial Court, by letting in elaborate evidence. In otherwise, in the judgment of ***D.L.F.Housing & Construction Vs. Sarup Singh and Others***, dated 12.09.1969, reported in 1970 SCR (2) 368: 1971 AIR 2324, our Hon'ble Apex Court has held as follows:

“The position is firmly established that while exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the errors have relation to the jurisdiction of the Court to try the dispute itself.”

33. So, applying the principle set out by our Hon'ble Apex Court, in this case also, the entire submission made by the either side counsel is based on the facts. Therefore, it is not necessary for this Court, to enter into the material aspects, in respect to the question of possession, etc. So, considering the entire circumstances, indicated by either side, this Court is of the opinion to direct the learned Principal District Munsif, Ambur, to

dispose of the suit, within a specific time, is proper to settle the dispute between the either parties.

34. Accordingly, the Civil Revision Petition is dismissed. The learned Principal District Munsif, Ambur, is hereby directed to post the suit i.e. O.S.No.158 of 2008 on a day-to-day basis and dispose of the same within a period of one month from the date of receipt of a copy of this order. ***Compliance report has to be submitted before this Court, after disposing the suit.*** No Costs. Consequently, the connected Miscellaneous Petition is closed.

06.02.2020

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

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To

1. The Principal District Munsif, Ambur.
2. The Subordinate Judge, Vaniyambadi

R.PONGIAPPAN, J.,

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Pre-delivery order in
CRP (NPD) No.417 of 2014

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