



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P. (PD) (MD) .No.538 of 2020
and C.M.P. (MD) .No.3388 of 2020

B.Naveen Kumar

.. Petitioner/Defendant

Vs.

R.P.Ramaeshan

.. Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint filed by the respondent/plaintiff in O.S.No.42 of 2020 on the file of learned District Munsif Court, Palani, Dindigul District.

For Petitioner : Mr.G.Thalaimutharasu

ORDER

The revision petitioner is the defendant in the suit in O.S.No.42 of 2020 filed by the respondent/plaintiff before the District Munsif Court, Palani. The above Civil Revision Petition is filed to strike off the plaint in O.S.No.42 of 2020, on the file of District Munsif Court, Palani.

2.The respondent filed the suit in O.S.No.42 of 2020, for injunction restraining the revision petitioner herein from interfering with the business of the plaintiff or from forcibly evicting the respondent from the suit property. It is not in dispute that the petitioner in the Civil Revision Petition is a co-owner, having purchased the property jointly along with the respondent/plaintiff. It is stated in the plaint that both have sold undivided 1/3rd share of the suit property to another. The plaintiff appears to have filed the suit, on the basis of tenancy agreement alleged to have been executed by the revision petitioner and the other co-owner in favour of the plaintiff in the suit. Apart from executing the lease agreement, it is also stated in the plaint that the revision petitioner and the other co-owner have also given a letter to the effect that they have no objection for



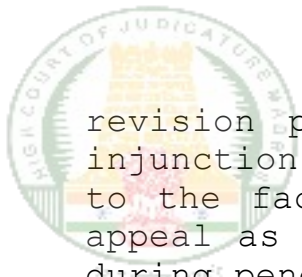
the plaintiff to carry on business in the suit property for the purpose of availing loan from Tamil Nadu Industrial Investment Corporation (TIIC). In the cause of action paragraph, it is also stated by the respondent that the revision petitioner is trying to interfere with his possession on 20.03.2020 and that he is likely to interfere with the business of the plaintiff being run in the suit premises.

3.From the reading of the plaint, it discloses the cause of action. The learned counsel appearing for the revision petitioner submitted that the plaintiff has filed the suit based on an unregistered lease deed and that he cannot seek injunction as against a co-owner of the property. Though the learned counsel for the revision petitioner submitted that right of one co-owner to exercise his right in respect of every parcel of the land should be protected, the situation in the present case is different. The respondent has filed the suit in his capacity as a tenant. Hence, the suit cannot be treated as one filed by one co-owner as against the other co-owner to injunct him from exercising his right as a co-owner. The plaintiff has filed the suit on the basis of contract.

4.The learned counsel has not pointed out any law that bars the suit or any other ground so as to attract Order VII Rule 11 C.P.C. Only in exceptional cases, the power under Article 227 of the Constitution of India can be exercised. Where the filing of a suit is a gross abuse of process of law or fraudulent, this Court will entertain a revision petition under Article 227 of the Constitution of India to strike off the plaint. In the present case, there is no abnormal situation warranting interference by this Court or to strike off the plaint. Since the plaint discloses the cause of action and it is not barred by any law, it is not proper or possible for this Court to entertain the Civil Revision Petition based on the probable case that might be pleaded by the defendant in the suit before the trial Court. It is settled that the Court will not consider a petition under Order VII Rule 11 of C.P.C to reject the plaint on the basis of the defence that is taken by the defendant in the written statement. This Court finds no ground to entertain this Civil Revision Petition to strike of the plaint.

5.Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. However, the trial Court is directed to deal with all issues on merits uninfluenced by any of the observation made in this order.

6.The learned counsel for the petitioner seeks indulgence from this Court to make an observation to the effect that the dismissal of the revision petition should not stand in the way of



revision petitioner in filing an appeal as against the interim injunction granted by the trial Court in the suit. Having regard to the facts, it is open to the revision petitioner to file an appeal as against the order of interim injunction that is granted during pendency of the suit.

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Sd/-

Assistant Registrar(CS)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Munsif, Palani, Dindigul District.

C.R.P. (PD) (MD) .No.538 of 2020

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