

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (PD) No.223 of 2021
and
C.M.P.No.2079 of 2021

1.N.Sakunthala Narayanan
2.N.Kala Narayana Moorthi
3.Narayana Moorthi

...Petitioners/
Defendants 1 to 3

Vs

P.Saradha

...Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 24.11.2020 made in I.A.No.1 of 2020 in O.S.No.294 of 2019 on the file of the Principal District Munsiff Court, Thirupur and consequently dismiss the suit as abuse of process of law.

For Petitioners : Mr.B.Manoharan

O R D E R

The present revision petition has been filed to set aside the order dated 24.11.2020, passed by the learned Principal District Munsif, Thirupur, in I.A.No.1 of 2020 in O.S.No.294 of 2019, in and by which the interim application filed by the revision petitioner for the rejection of plaint was dismissed.

2. It is the case of the revision petitioners that in an earlier occasion they had filed a suit in O.S.No.593 of 2004 against one Mala Balakrishnan, which was allowed in part, against which, the present revision petitioners filed an appeal in A.S.No.338 of 2007 before this Court. This Court allowed the said appeal and the property which was the subject matter of the said suit was decreed in their favour, against which S.L.P.(C) D.No.26951 of 2019 was preferred by the plaintiff Mala Balakrishnan before the Apex Court which was also dismissed and the said property stood vested in their name.

3. However, the present suit in O.S.No.294 of 2019 has been filed by the plaintiff/respondent who is alleged to be a tenant of the said Mala Bala Krishnan, on the ground that he should not

be evicted from the suit property except in the manner known to law. In the said suit, the present I.A.No.1 of 2020 has been filed under Order VII Rule 11 CPC, on the ground that the respondent/plaintiff colluded with the said Mala Bala Krishnan against whom this issue has already been attained finality and the present plaint is filed only for harassing the revision petitioners once again before the Court and not allowing them to enjoy the decree obtained by them. The said I.A. was countered by the respondent/plaintiff stating that none of the ingredients proving under Order VII Rule 11 CPC has been made out and that the grounds raised in the interim application are the facts which needs to be substantiated at the time of trial and the mere prayer of the plaintiff seeking for a bare injunction restraining the petitioners from interfering with his possession except in the manner known to law cannot be said to be an issue for filing a petition under Order VII Rule 11 CPC, accordingly, he prayed for rejection of the interim application.

4. The trial Court after hearing either side based on the materials available on record held that the grounds raised in the I.A. are more specifically with regard to the collusion alleged between the plaintiff and Mala Bala Krishnan, which facts has to be established at the time of trial and further the relief sought for is for a bare injunction not to evict him from the premises except by due process of law. The said relief cannot be rejected without going through the process of trial and further the fourth defendant in the present suit has been shown as a party in the interim application. The interim application filed by the petitioners cannot be sustained and further the allegation of collusion averred and re-litigation by the behest of the respondent/plaintiff and the fourth defendant could be established only at the time of trial and therefore the relief sought for by the revision petitioner for rejection of the plaint cannot be sustainable, accordingly, the I.A. was dismissed, challenging the said dismissal order the present revision has been filed.

5. Learned counsel for the petitioner submits that the litigation between the petitioner and the fourth defendant has already been decided by the Hon'ble Apex Court and the partial agreement which is proposed into service by the plaintiff with the fourth defendant itself proves that it is only admitted by the fourth defendant to defeat the rights of the plaintiff by re-litigating the same matter through the present plaintiff. It is the further submission of the learned counsel for the petitioner that in the absence of any argument placed before the Court below as to the arguments between the plaintiff and the fourth defendant, the claim of the oral agreement itself shows that it is an admitted fact by the fourth defendant to drag on the proceedings which cannot be allowed and the Court below has

not appreciated the facts in a proper perspective and the findings of the Court below that the ingredients as containing under Order VII Rule 11 CPC having not been specified as fully un-sustainable and accordingly the order deserves to be dismissed.

6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. It is not in dispute that the litigation between the revision petitioners and the fourth defendant in the present suit has attained finality. There is no clarification with regard to the same plea, the present suit has been filed by the plaintiff alleging that he is a tenant under the fourth defendant and that any action against him should be taken only in the manner known to law and to that extent the bare injunction is prayed for.

8. From the above disclaimer that the cause of action on the basis of which the plaint has been laid, the filing of the interim application under Order VII Rule 11 CPC cannot be alleged to stand. The validity or invalidity or the cause of action is an issue which can be determined only at the time of trial and not at this point of time. Further, the grounds raised in the interim application are facts, which facts have to be adjudicated at the time of trial and the prayer sought for in the plaint being one for bare injunction not to evict the petitioner, except due process of law cannot be dismissed in limine without establishing and it is only during the trial whether there was any existing tenancy with the plaintiff and the fourth defendant could be established.

9. At this point of time except for the period of time taken for disposal of the suit to the order passed by the Hon'ble Supreme Court in S.L.P., no other documents have been produced by the revision petitioner before this Court to show that the premises is in under occupation by some other person. The earlier round of litigation reveals that there was an another tenant by name Thangavel in the said suit property who is not a party here. Therefore, it is to be presumed that the said Thangavel is no longer a tenant under the petitioners. The respondent/plaintiff is running a business in the said premises and the petitioners/defendants trying to evict him by force by threatening acts, the tenancy of the plaintiff with the fourth defendant has to be established only at the time of trial and the trial Court after proper application of mind has rendered the said finding. Further the collusion and fraud having been alleged by the revision petitioners between the plaintiff and the fourth defendant and the fourth defendant is also a necessary party in the interim application. The said fact of

collusion and fraud has to be established by the revision petitioners at the time of trial and to allow the interim application at the initial stage, to reject plaint cannot be granted. As there are triable issues in the plaint in rejecting tenancy, collusion, res judicata and the petitioner has not made out a case which would fall under Order VII Rule 11 CPC. The trial Court on proper analysis of the case had come to a right conclusion to dismiss the interim application and the said findings recorded by the trial Court based on the adjudication and findings, does not warrant any interference.

10. Accordingly, the present civil revision petitions stands disposed of. No costs. Consequently, connected Civil Miscellaneous petition also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To
The Principal District Munsif,
Tirupur.

+2cc to Mr.B.Manokaran, Advocate, S.R.No.8760

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VSN-II (CO)
KM(27/04/2021)

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