

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 13.08.2021	Orders pronounced on 26.08.2021
----------------------------------	------------------------------------

Coram

THE HONOURABLE Mr.JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.1808 of 2020andC.M.P.No.11023 of 2020

K.Selvaraj

... Petitioner

Vs

1. K.Palanisamy

2. K.Jayaraman

3. P.Kalyanasundaram @ Rajan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Judgment and Decree dated 17.12.2019 passed in C.M.A.No.18 of 2018 on the file of V Additional District and Sessions Judge, Coimbatore, confirming the Fair and Decretal order dated 15.02.2018 in I.A.No.1541 of 2017 in O.S.No.1586 of 2017 on the file of the Principal Subordinate Judge, Coimbatore.

For Petitioner

..

Mr.I.Abrar Mohamed Abdullah

For Respondents 1 & 2

..

Mr.T.S.Baskaran

For Respondent-3

..

M.R.Thangavel

ORDER

This petition is filed challenging the order passed by learned V Additional District and Sessions Judge, Coimbatore in CMA No.18 of 2018 on 17.12.2019 confirming the fair and decreetal order dated 15.02.2018 of the Principal Subordinate Judge, Coimbatore, passed in I.A.No.1541 of 2017 in O.S.No.1586 of 2017.

2. O.S.No.1586 of 2017 was filed by the petitioner against the respondents for the relief of permanent injunction restraining the respondents, their men, agents and servants in disturbing petitioner's peaceful possession and enjoyment of the suit property.

3. The case of the petitioner is that the suit property to an extent of 28.42 cents land with buildings in S.No.91/1A.6 in Singanallur village was purchased by him and his brother Janakaraj on 25.02.1991. In a partition on 30.09.1995 between petitioner and his brother Janakaraj, the suit property was allotted to the petitioner. Petitioner put up a shed in the suit property in 1996 and is in possession and enjoyment of the property. Second respondent is the younger brother of petitioner. He has his property on the east of the suit property. First respondent is father-in-

law and third respondent is brother-in-law of the second respondent. With a view to grab the suit property, the second respondent fabricated lease deed in favour of his father-in-law and filed a suit in O.S.No.291 of 2004 on the file of II Additional District Munsif, Coimbatore. The suit was dismissed on 17.04.2017. Even after the dismissal of the suit, respondents are attempting to interfere with the petitioner's possession and enjoyment of the suit property.

4. Petitioner has filed I.A.No.1541 of 2017 under Order 39 Rules 1 and 2 CPC for temporary injunction. Learned Principal Subordinate Judge, Coimbatore, dismissed the petition. Against the dismissal order, petitioner preferred CMA No.18 of 2018 before the learned V Additional District and Sessions Judge, Coimbatore. Against the said dismissal order, the present Civil Revision Petition is filed.

5. Learned counsel for the petitioner submitted that there is no dispute with regard to the title to the suit property. The respondents admitted that the petitioner is owner of the suit property. In a collusive suit filed in O.S.No.291 of 2004, possession in respect of the suit property claimed by the respondents was negated. Petitioner has

produced records to show his title and possession. Without considering petitioner's title and possession, both the courts below have now wrongly dismissed the temporary injunction petition. In O.S.No.291 of 2004, learned II Additional District Munsif, Coimbatore, had elaborately discussed the claim of possession in respect of suit property by the first respondent and negatived the claim and held that the respondents were not in possession and enjoyment of the suit property and therefore, dismissed the suit filed by collusion. It is unfortunate that the courts below have taken a different view of the matter and held that the petitioner has not proved his possession on the date of filing the suit and negatived the relief sought for.

6. In response, learned counsel for the respondents submitted that though the title to the suit property in favour of the petitioner is not disputed, the petitioner has not proved that the petitioner is in possession of the suit property either on the date of filing the suit or even after filing of the suit. In this regard, learned counsel for the respondents produced a copy of the plaint filed by the petitioner in O.S.No.1242 of 2010 against the second respondent and electricity department to show that the petitioner was not in possession and enjoyment of the suit property on

the date of filing of the suit. It is further submitted that the petitioner based this suit on the basis of the judgment passed in O.S.No.291 of 2004. Against that judgment, respondents preferred an appeal in A.S.No.79 of 2017 on the file of Sub Court, Coimbatore, and it is pending. Therefore, the judgment in O.S.No.291 of 2004 is not final. When the appeal against O.S.No.291 of 2004 is pending, the petitioner cannot seek any relief on the basis of judgment in O.S.No.291 of 2004.

7. Considered the rival submissions. Reading of the plaint in O.S.No.1586 of 2017 shows that the petitioner had shown the dismissal of O.S.No.291 of 2004 as one of the causes of action for filing the suit. Learned counsel for the petitioner elaborately read out some passages from the judgment in O.S.No.291 of 2004 to convince the Court that the respondents were not in possession and enjoyment of the suit property. As it is now made known that there is an appeal in A.S.No.79 of 2017 is pending against the judgment and decree in O.S.No.291 of 2004 , this Court will not rely the judgment in O.S.No.291 of 2004 to find out who is in possession of the suit property. It is seen that the petitioner has produced Exs.P1 to P7 to show his title and possession in respect of the suit property. Respondents have produced Exs.R1 to R14 to show their

possession and enjoyment of the suit property. Finding that the documents filed by the petitioner as Exs.P1 to P7 are not sufficient to establish prima facie possession and enjoyment of the suit property, the petitioner's claim was negated. That finding was confirmed by the appellate court. It was found by the first appellate court that first respondent is in possession and running 'Sri Balaji Packs'. It appears that there is no dispute with regard to the landed property, but the dispute seems only with regard to the building in the property. The contention of the respondents is that the building in the suit property is the joint property of the petitioner and second respondent and it vested with the partnership firm. However these are the matters to be considered in the trial.

8. One important thing is that the petitioner himself claimed in O.S.No.1242 of 2010 that he is taking steps against the second respondent to vacate him from the suit property meaning thereby, petitioner is not in possession and enjoyment of the suit property. This suit was filed by the petitioner against the second respondent and electricity authorities that they should not give electricity service connection to the suit property. His claim is that the suit property, that is,

28.183 cents were allotted to the petitioner in a partition between himself and his brother Jayaraman and Jayaraman was allotted 16.175 cents in SF.No.89/2D; they constructed building in their respective lands jointly and effected partition and enjoying their respective portions; A partnership concern by name “Janatha Paper Packaging” was functioning in the suit property; Petitioner, Jayaraman and family members are partners; Electricity connection was in the name of another brother Janakarajan and it was transferred to the name of the petitioner on 04.05.1998; The partnership business was closed during 1999-2000; Then the electricity connection was cut off on 16.04.1999; Then first defendant/second respondent herein got electricity connection in his individual capacity for his possession of the building in SF.No.89/2D; Then violating the rules, he unauthorisedly extended the EB connection to the portion of the property; He also fabricated the lease deed and inducted his father-in-law Palanisamy as a tenant; Therefore, he filed that suit that he is taking separate legal steps against his brother Jayaraman and his father-in-law to vacate them from the suit property.

9. The averments made in O.S.No.1242 of 2010 clearly shows that the petitioner was not in possession and enjoyment of the suit

property on the date when the suit in O.S.No.1586 of 2017 was filed. Both the courts below have taken this aspect and also other materials to come to the conclusion that the petitioner was not in possession and enjoyment of the suit property on the date of filing of the suit and therefore, he is not entitled for the relief of temporary injunction and dismissed the petition. This Court finds no reason to interfere with the order of the courts below for the reason that the petitioner has miserably failed to show that he was in possession and enjoyment of the suit property on the date of filing of the suit. On the other hand, respondents were able to show that they were in possession and enjoyment of the suit property. Therefore, the fair and decreetal order of V Additional District and Sessions Judge, Coimbatore, dated 17.12.2019 passed in C.M.A.No.18 of 2018 on the file of V Additional District and Sessions Judge, Coimbatore, confirming the fair and Decreeal order dated 15.02.2018 made in I.A.No.1541 of 2017 in O.S.No.1586 of 2017 on the file of the Principal Subordinate Judge, Coimbatore, is hereby confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

26.08.2021

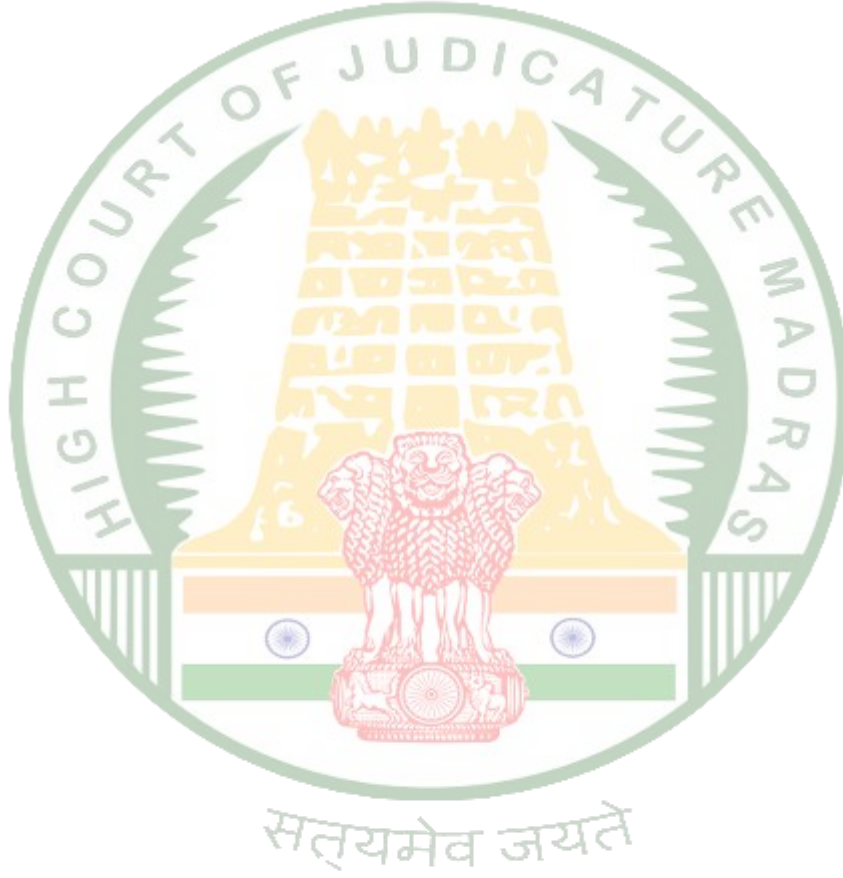
mra

Index : Yes / No

Speaking order : Yes / No

To:

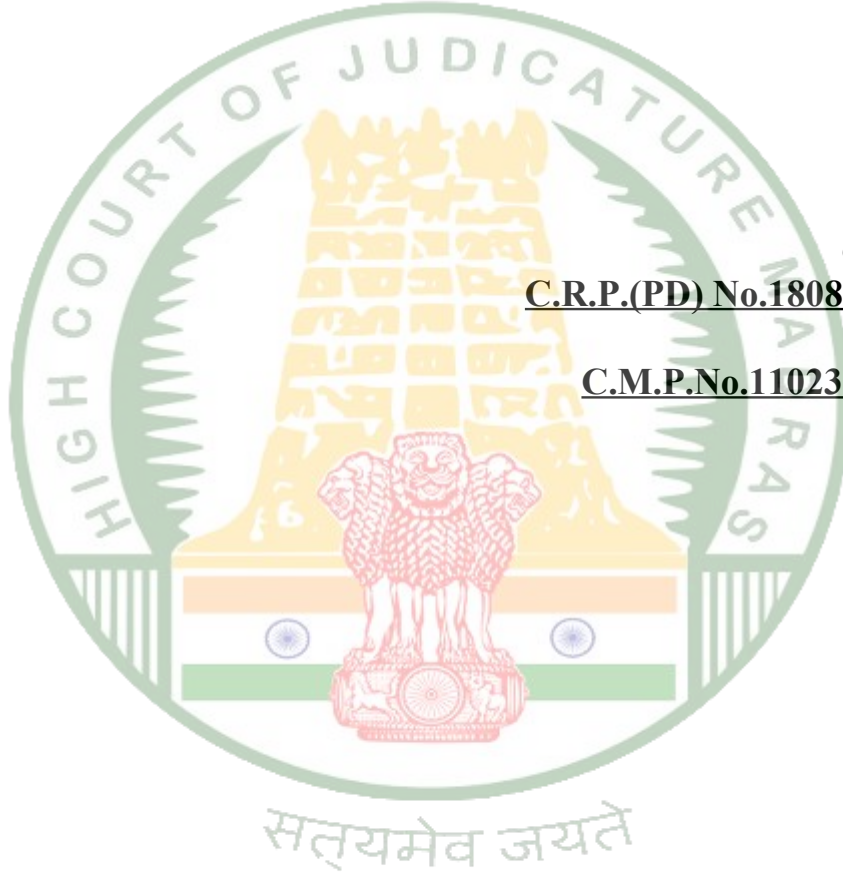
1. The V Additional District and Sessions Judge, Coimbatore.
2. The Principal Subordinate Judge, Coimbatore.



WEB COPY

G.CHANDRASEKHARAN, J.

mra



order in
C.R.P.(PD) No.1808 of 2020
and
C.M.P.No.11023 of 2020

WEB COPY

26.08.2021