



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2083 of 2021

and

C.M.P.No.15853 of 2021

V.Aniruth

... Petitioner/Respondent/Plaintiff
Vs

L.Krishnamoorthy

... Respondent/Appellant/Defendant

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 27.08.2021 passed in C.M.A.No.3 of 2017 on the file of the Subordinate Court at Madurantakam against I.A.No.1640 of 2016 in O.S.No.163 of 2016 on the file of District Munsif Court at Madurantakam.

For Petitioner : Mr.S.Prem Auxilian Raj.

For Respondent : Mr.K.Govi Ganesan.

O R D E R

This Civil Revision Petition has been filed challenging the order passed on 27.08.2021 in C.M.A.No.3 of 2017 on the file of Sub Court, Madurantakam against the order passed in I.A.No.1640 of 2016 in O.S.No.163 of 2016.

2.The Learned Counsel for the Petitioner submitted that the Petitioner filed a Suit in O.S.No.163 of 2016 against the Respondent seeking relief of permanent injunction restraining the Respondent his men and agents from anyway interfering with Plaintiff's possession and enjoyment of the Suit properties.

3.It is the case of the Petitioner in the plaint that the



Suit properties are ancestral properties in which he has right to share. His father Venkatesan is acting against the interest of the Petitioner colluding with the Respondent. The Respondent attempted to trespass the properties on 30.09.2016. Therefore, the Suit was filed. He also filed I.A.No.1640 of 2016 under Order XXXIX Rules 1 and 2 and Section 151 of Civil Procedure Code for the grant of temporary injunction till the disposal of the Suit. In the said Petition, the Respondent filed counter and the Petitioner produced documents in support of his possession which are marked as Ex.P.1 to Ex.P.3.

4.The Learned District Munsif, Madurantakam, on going through the rival submissions arrived at a finding that the Petitioner produced documents to prove his case of possession of the properties on the date of filing of the Suit and the Respondent has not produced any documents in support of his case and allowed the Petition granting temporary injunction till the disposal of the Suit.

5.The Learned Counsel for the Petitioner further submitted that the Respondent filed C.M.A.No.3 of 2017 on the file of Sub Court, Madurantakam against the order passed in I.A.No.1640 of 2016. In the Appeal, both the Petitioner and the Respondent filed Applications for reception of additional evidence. The Learned Sub-ordinate Judge, Madurantakam, on considering the rival submissions and the fact that the documents produced by the Petitioner stands in the name of the Petitioner's father and his father was not impleaded as party to the Suit, set aside the order passed in the injunction application with a direction to the trial Court to dispose the case within 6 months and dismissed the Applications filed for reception of additional evidence with a liberty to approach the trial Court to produce the documents during the trial.

6.The Learned Counsel for the Petitioner submitted that the injunction was not sought against the co-owner. The Respondent in this case is a third party to the Suit properties and he has no right in respect of the Suit properties and a co-owner can claim injunction in respect of the Suit properties on behalf of the other co-owner also. However, the Learned Subordinate Judge dismissed the Petitions and allowed the Appeal stating the reason that the Petitioner's father was not impleaded as a party to the Suit.



7. In response, the Learned Counsel for the Respondent submitted that the Respondent is the owner of the properties and the suit properties are in his possession and enjoyment. Therefore, he prayed for confirming the order of the Learned Subordinate Judge and for dismissal of this Petition.

8. Considered the rival submissions made by the Learned Counsel for the Petitioner and the Respondent and perused the records.

9. The Suit has been filed for permanent injunction in the year 2016. Till now the parties have been fighting and prosecuting in the Petition filed for temporary injunction. If they had gone for trial, the Suit itself would have been disposed this time. Be that as it may, as of now, from the records produced, this Court understands that the Petitioner has filed documents to show his possession of the Suit properties such as patta which stood in the name of the Petitioner's father and the partition deed. It is no doubt that Petitioner and his father are co-owners of the Suit property.

10. One co-owner can maintain a Suit in respect of joint family property on behalf of the other co-owner as well. Admittedly, the Respondent has not produced any documents in support of his claim of ownership and possession and that is the reason why the Learned District Munsif had ordered temporary injunction in favour of the Petitioner.

11. The Learned Appellate Judge, though both the parties have filed applications for reception of documents as additional evidence, has not received those documents and dismissed the applications and allowed the Appeal, on the wrong reasoning that documents stood in the name of the Petitioner's father and he has not been impleaded as a party in the Suit. The reason given for dismissal of the injunction application is not correct. Therefore, the order of the Learned Subordinate Judge, Madurantakam in C.M.A.No.3 of 2017 is set aside and the order passed in I.A.No.1640 of 2016 in O.S.No.163 of 2016 by the Learned District Munsif, Madurantakam is restored. The Learned District Munsif, Madurantakam is directed to dispose of the Suit in O.S.No.163 of 2016 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy



of this Order.

12.Resultantly, this Civil Revision Petition is allowed with the above direction. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ay/jai

To

1.The District Munsif,
Madurantakam.

2.The Subordinate Judge,
Madurantakam.

+1cc to Mr.S.Prem Auxilian Raj, Advocate, S.R.No.50323

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.49891

C.R.P.No.2083 of 2021

and

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AK(CO)

BVC(22/10/2021)