



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (PD) (MD) No.1826 of 2021

1.Mumtaj Begam

2.Jahir Hussain

3.Sahul Hameed

4.Mohammed Shajakhan

... Petitioners

(The 1st , 2nd and 4th petitioners are represented by their power agent through the third petitioner Sahul Hameed)

Vs .

Prabhakaran

... Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decretel dated 27.09.2021 made in I.A.No.314 of 2020 in O.S.No.335 of 2020 on the file of the Principal Sub Court, Kumbakonam, Thanjavur District and allowing this civil revision petition.

For Petitioners

: Mr.G.Gomathi Sankar

ORDER

The plaintiffs, whose application for appointment of receiver had been dismissed by the learned Principal Subordinate Judge, Kumbakonam, are the revision petitioners.

2.The facts in brief are as follows:-

(i) The petitioners/plaintiffs herein had filed a suit in O.S.No.335 of 2020 on the file of the Principal Subordinate Judge, Kumbakonam, Thanjavur District, for recovery of possession of the suit property from the defendant and for future *mesne* profits.

(ii) The case of the plaintiffs was that the suit property belonged to their mother under two registered documents. She had thereafter mutated the revenue records in her name and had been in possession and enjoyment of the property till her death. The plaintiffs would claim the right to the property as legal heirs of their deceased mother.



(iii)The case of the plaintiffs is that the defendant had trespassed into the suit property on 07.11.2020. In fact, on an earlier occasion, the defendant has attempted to trespass into the suit property, for which, the plaintiffs had filed a suit in O.S.No.64 of 2017 on the file of the Principal Subordinate Judge, Kumbakonam and the same is pending for disposal. Thereafter, since there was once again an interference in fasli 1430 wherein the defendant had trespassed into the property, the present suit has been filed. Since the defendant is in enjoyment of the property, the plaintiffs had sought for appointment of a receiver to collect the proceeds from the sale of the crops and deposit the same into the Court.

(iv)The respondent/defendant had filed a counter *inter alia* contending that the prayer itself had been become infructuous, since the harvest had concluded as early as in January 2021 and further the defendant has been cultivating the lands since 2017. The defendant denied the enjoyment of the suit property by the plaintiffs and would state that all the allegations in this regard is nothing, but a figment of the fertile imagination of the plaintiffs. The defendant would submit that he has filed a suit in O.S.No.188 of 2012, wherein he filed all the documents to show his possession and enjoyment of the property. He would submit that there was no necessity for appointing a receiver.

(v) The learned Principal Subordinate Judge, Kumbakonam on perusing the records and hearing the parties, came to the conclusion that the plaintiffs have not made out any case for appointing a receiver. The fact whether the defendant had trespassed into the property as a sublease or whether he was in possession of the same in his own right, is an issue which had to be gone into during the trial of the suit. Hence, there was no necessity to appoint the receiver. It is this order that is under challenge in this civil revision petition.

3.Heard the learned counsel for the plaintiffs, who has reiterated the contentions in the petition.

4.As rightly pointed out by the learned Subordinate Judge, Kumbakonam, the issue as to whether the defendant was in illegal possession of the property or otherwise is the matter that has to be gone into, during the trial. The case of the defendant is that he is in rightful possession of the property. The power to appoint the receiver has to be sparingly exercised by the Court. Unless exceptional circumstances are shown, Courts must be circumspect, while allowing petition to appoint a receiver only in exceptional circumstances a receiver need be appointed and in the instant case, no exceptional circumstance has been set forth.



5. Therefore, the order of the learned Principal Subordinate Judge, Kumbakonam, does not require reconsideration and accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

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, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Principal Subordinate Judge,
Kumbakonam,
Thanjavur District.

+1 CC to M/s.G. GOMATHISANKAR, Advocate (SR-35696[F] dated 24/11/2021)

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MGJ(21.12.2021) 3P 3C