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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 14.07.2021

Delivered On : 11.08.2021

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD).No.2759 of 2018

and

C.M.P. (MD).No.12103 of 2018

K.Shanthi

... Revision Petitioner/Defendant

Vs.

A.Rajendran

... Respondent/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to strike off the suit filed in O.S.No.421 of 2018, on the file of the learned Principal District Munsif, Madurai Town.

For Petitioner	: Mr.Shanmitha Sakthivel
	For Mr.R.M.Makesh Kumaravel
For Respondent	: Mr.M.S.Balasubramaniya Iyer

ORDER

This petition has been filed to strike off the suit filed in O.S.No.421 of 2018, on the file of the learned Principal District Munsif, Madurai.

2.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent has filed a suit in O.S.No.421 of 2018, for permanent injunction not to disturb the possession and enjoyment of the plaintiff unless under due process of law.

3.On the side of the revision petitioner, it is stated that the suit itself is an abuse of process of law. The plaintiff failed to mention the leave and license agreement entered into between the husband of the petitioner and the plaintiff. As per the document filed by the plaintiff, there is no tenancy agreement. The suit property is in the hands of the revision petitioner and seeking an order of bare injunction against the revision petitioner is not inconsistent in nature. The possession of the rice mill is in the hands of the defendant. There is no document to prove legal possession. Only permission to use certain amenities in the suit properties was given to the plaintiff. Even as per the document filed by the plaintiff, the relationship between the petitioner and the respondent is only for the purpose of using the services rendered in the rice mill alone. That transaction does not whisper anything regarding the lawful possession and enjoyment of the suit

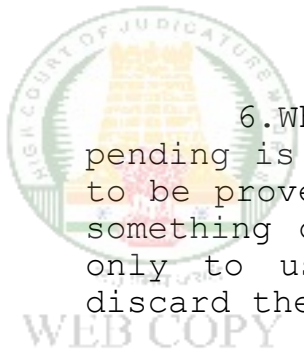


property. The plaintiff cannot claim right of possession without any basis. Passing an ex parte order of injunction without considering the facts of the case is wrong. No reason was stated in the petition filed under Order 39 Rule 3 of CPC.

4. On the side of the revision petitioner, it is stated that the plaintiff is not having any right to continue in possession. The injunction was granted on the basis of tenancy. No proof of tenancy was ever filed by the plaintiff. The petitioner is not the owner of the property and the respondent is not the tenant. The defendant who is the wife of the owner, received the rent. There was no rental agreement and there was only lease agreement. That too was also not with the petitioner, but was with the husband of the petitioner. Already the building, in which the plaintiff was occupying was demolished. The property is vacant. Since the property is kept vacant, there is no question of injunction or disturbing possession. The plaintiff shifted his business to some other premises and an intimation for the same was given in a wall poster. A copy of the intimation is filed. When there is no proof to tenancy agreement, the plaintiff is not having any legal right to be in possession and the suit itself is an abuse of process of law. In support of his contention, a judgment passed by this Court in the case of **M.V. Jayavelu v. E. Umapathy** reported in **2010-5-L.W-748** is cited.

5. On the side of the revision petitioner, it is stated that there is no tenancy or cause of action. In support of this contention, a judgment passed by this Court in the case of **Seeni @ Sundarammal v. Ramasamy Poosari and 2 others** reported in **2000(3) CTC 74** is cited, wherein it is stated as follows:

"In the decision reported in Chinnarajan, A. v. N.S. Sabbaiyah, and Rijhwia, H.H. v. N. Venkat Ramani, 1999 (II) CTC 713, it has held that while granting ex parte interim orders, reasons must be recorded by the Court. But, in this case on hand, there are absolutely no reasons stated by the lower Court for the grant of injunction. In a case where a writ petition was filed claiming same reliefs after five days of dismissal of the earlier writ petition, it was held by this Court in Mohan Sambasivm.S. v. The Commissioner of Prohibition, that it is a clear abuse of a process of Court. In the decision reported in Bank of Maharashtra, Madras v. The State Trading Corporation of India Ltd., Madras, 1999 (I) MLJ 177 and in Ranipet Municipality rep. By its Commissioner & Special Officer, Ranipet v. M. Shamsheerkhan, 1997 (II) LW 761. In the decision reported prevent such actions being contained. The decision reported in Moderator, Church of South India C.S.I. Centre, Chennai v. J.S."



6. When there is no chance of success, keeping the suit pending is an abuse of process of law. Continuing in possession has to be proved. The plaintiff is suing a wrong person. The license is something different from tenancy. The licensee is having the right only to use certain benefits and a decree is not necessary to discard the license.

7. In support of this contention, a judgment passed by the High Court of Delhi in the case of **Laxman Singh and others v. Urmila Devi and others** reported in **2014(3) DEL 1649** is cited, wherein it is stated as follows:

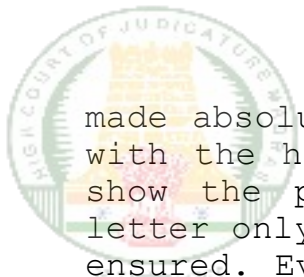
"The rights of a licensee to stay in possession of the property have been dealt by the Division Bench of this High Court in the case of Chandu Lal v. Municipal Corporation of Delhi AIR 1978 Del 174. Relevant portion of paragraph 26 of which is reproduced as under:-

26.....A mere licensee has only a right to use the property. Such a right does not amount to an easement or an interest in the property but is only a personal privilege to the licensee. After the termination of the license, the licensor is entitled to deal with the property. He need not secure a decree of the Court to obtain the right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespasser....."

8. The plaintiff is not in possession of the property and the suit is not maintainable. The documents were filed on the side of the petitioner to prove that the agreement is only for leave and license and prayed the suit to be strike off.

9. On the side of the respondent, it is stated that whether the plaintiff is in possession of the property or not has to be decided only after the trial. Machines are installed and it is a rice mill. The plaintiff is in possession and that the plaintiff is paying the electricity charges and was paying the rent then to the defendant's husband and now to the defendant regularly. Whether the possession of the plaintiff is by way of tenancy or by way of a leave and license agreement can be decided only after the trial and not at this stage. Full fledged enquiry is needed and the matter cannot be thrown out at this threshold. In support of this contention, the judgment passed by this Court in the case of **L.Rathanchand Sarma v. Vinayaka Exports & Imports and Others** reported in **(2021) 4 MLJ 17** is cited.

10. On the side of the respondent, it is stated that the defendant has not chosen to file the written statement. No counter was filed in the injunction petition and that the injunction was



made absolute. The petitioner is trying to dispossess the plaintiff with the help unruly elements. The plaintiff filed 68 documents to show the possession. If serial number, Ex.P6 is considered as a letter only with regard to machinery, the use of machinery has to be ensured. Even a license holder has to be treated as person entitled for lawful possession. A permission from the Corporation for demolishing the building was obtained by three strangers. Permission was not given to the petitioner to demolish the building. Demolition of the building cannot be a sufficient ground to strike of the suit. A plaint cannot be thrown away for subsequent events. The building includes the site, in which it stands. The plaintiff is in possession of the site. The injunction order still holds good for the site.

11.On the side of the respondent, it is stated that only the shop was transferred but there was no mentioning in the intimation notice regarding the mill. The demolition of the building has nothing to do with the case. The plaintiff may claim lease or composite lease of machinery. But any way he is entitled to claim possession. The plaintiff may succeed or may not succeed but the suit cannot be rejected at the threshold without an enquiry.

12.On the side of the petitioner, it is stated that the plaintiff is not specifically clear as to the right of possession either by way of tenancy or by way of licensee. There is no cause of action for the plaint. Only to extract money from the petitioner, the respondent is keeping the case pending.

13.The plaintiff was in possession of the suit property whether the possession was on the basis of a tenancy right or a right of lease and license cannot be decided in this petition. This fact requires evidence. It is seen that the plaintiff has got an injunction order and the injunction order was made absolute by the trial Court. In the meanwhile, the petitioner in the name of a third party has applied the Municipal Corporation for permission to demolish the building. It is stated that the building was demolished and the place is kept vacant. The right of the plaintiff cannot be decided as extinct by the demolition of the building. The revision petitioner has not filed any petition before the trial Court for rejection of the plaint. The petitioner has approached this Court directly and get the stay order and the suit is pending for the past 3½ years. The subsequent activities will not curtail the original suit filed by the plaintiff. The right of the plaintiff can be decided in the original suit. There is no necessity to reject the plaint at the threshold on the basis of subsequent events that took place place after the filing of the suit that too when the injunction order was in force.



14.For the above reasons, this Civil Revision Petition is Petition is dismissed and the order passed in O.S.No.421 of 2018, on the file of the learned Principal District Munsif, Madurai is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 District Munsif,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.R.M.MAKESH KUMARAVEL, Advocate (SR-26089[F] dated 12/08/2021)

C.R.P. (PD) (MD) .No.2759 of 2018

11.08.2021

RS (19.08.2021) 5P 5C