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C.R.P.(PD) No.395 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.395 of 2022

and

C.M.P. No.2060 of 2022

S.Shakila Banu

... Petitioner

Vs.

1.M.Vijayarajan

2.H.M.Maheswari

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 21.09.2021 made in I.A. No.3 of 2020 in O.S. No.7 of 2018 on the file of the IV Additional District Judge, Erode District at Bhavani.

For Petitioner : Mr.B.Mohan

ORDER

The defendant has challenged the order passed by the learned IV Additional District Judge, Erode District at Bhavani allowing the petition filed by the respondents herein seeking an amendment to the plaint.



2. The respondents herein had filed a Suit in O.S. No.7 of 2018 on the file of the above referred Court for cancelling the sale deed executed by them in the name of the defendant/petitioner on 08.01.2018 as sham and nominal one as the same has been executed for a loan transaction and for a mandatory injunction directing the defendant to hand over the original Sale Deed of the plaintiff dated 12.03.2012 within a time schedule as also for a permanent injunction restraining the defendant from the interfering with their peaceful possession and enjoyment of the property either by trespassing into the property or encroaching into the same.

3. The sum and substance of the plaintiffs' case is that they had been in dire need of funds for which they had approached the defendant and she had offered a hand loan to them on condition that the defendant executed an agreement of sale in respect of schedule property and thereafter a sale deed itself was executed as security. The plaintiffs would contend that they continue to be in possession since the documents were all intended only as a security and was never acted upon and was therefore, sham and nominal documents. However, since the defendant had started attempting to interfere in the possession on and from 20.01.2018, plaintiffs had come forward with



the above Suit.

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4. A detailed written statement along with counter claim was filed by the defendant inter-alia contending that the Suit itself was based on false and fabricated contentions; that the plaintiffs had voluntarily executed the sale deed with the clear intention of transferring title to the defendant; that the defendant has availed a loan for purchasing the property after mortgaging their house property besides mobilising amounts by pledging jewellery. The defendant would submit that the plaintiff is working as a driver with the Tamil Nadu State Transport Corporation and had a lot of muscle power and political power behind with him and taking advantage of this position and considering the fact that the defendant's husband was in abroad, the plaintiffs' have come forward with this false case.

5. It is also the case of the defendant that after the sale she had been put in possession of the property and on 24.04.2018, the plaintiffs along with his henchmen has criminally attempted to trespass into the suit schedule property and take possession of the same. However, the said attempt was successfully thwarted by the defendant. Therefore, the



defendant has filed her written statement with the counter claim to restrain the plaintiffs, their men and agents from interfering with the defendant's peaceful possession and enjoyment of the suit schedule property.

6. The plaintiffs had filed the reply statement refuting the contentions made in the written statement and also denying the counter claim. The plaintiffs had filed I.A.No.436 of 2018 for grant of ad-interim injunction. This application came to be dismissed after contest. The petitioners/plaintiffs had also moved an application for appointment of Advocate Commissioner to visit the suit property and note down the physical features in I.A. No.436 of 2018. This application was also dismissed. The order in I.A. No.436 of 2018 was taken up on challenge before this Court in C.M.A.No.1797 of 2018. This Court had dismissed the said appeal with a direction to the Trial Court to dispose of the Suit expeditiously.

7. It is at this juncture, that the impugned petition came to be filed to amend the plaint. The details of the amendment has been extensively set out in the petition for amendment. The plaintiffs had sought to include the



prayer for delivery of possession. In the affidavit filed in support of the said application, the petitioners / plaintiffs would submit that on 11.11.2018, the respondent using her connections had conspired with the Inspector of Police, Amma Pettai to evict the petitioners / plaintiffs from the property. With this intent, the 2nd plaintiff and the daughter of plaintiffs 1 and 2 were brought to the Police Station on 11.11.2018 at around 10.00 p.m. The first plaintiff was also illegally detained on 12.11.2018 that they were sent to judicial custody at night. After removing the plaintiffs from the suit premises in this clandestine manner, the defendant has entered into the possession of the property and had forcibly removed all the properties of the plaintiffs and therefore, this has necessitated the filing of this application to amend the plaint to include the relief delivery of possession.

8. The defendant had resisted the said application stating that the same is nothing but a bunch of lies and that the defendant had been put in possession of the property under the sale deed executed in her favour. The allegations contained in the affidavit was stoutly denied by the respondent. The respondent would also contend that after the purchase, she had put up construction and started a dairy firm in the name and style of “Venmai



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Dairy”. Therefore, the contention that the plaintiffs were forcibly removed is an absolutely false statement. She therefore sought to have the amendment dismissed.

9. The learned IV Additional District Judge, Bhavani, Erode by her order dated 21.09.2021 was pleased to allow the petition. The learned Judge had observed that the plaintiffs had pleaded that they had been forcefully evicted on 11.11.2018 after the filing of the Suit and the allegation has to be proved during Trial. No serious prejudice would be caused to the defendant as the amendment to the prayer does not change the nature of the Suit. If a decree is granted cancelling the sale deed dated 08.01.2018 the plaintiffs would have to file another suit for recovery of possession. Therefore, the instant amendment would help the defendant as well as it would avoid multiple suits. Challenging the said order, the defendant is before this Court.

11. From a perusal of the amendment application, it is seen that the dispossession is alleged to have taken place pending the Suit. Therefore, by no stretch of imagination can it be stated that the prayer ought to have been taken when the Suit was filed, since on the date of filing of the Suit, this



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cause of action has not arisen. The main Suit is for a declaration that the sale deed executed by the plaintiffs / respondents herein in favour of the revision petitioner is sham and nominal one and not binding on the plaintiffs. The plaintiffs case is that possession has been forcibly taken pending the suit, this allegation has to be proved by the plaintiffs. Therefore, viewed from any angle the order allowing the application cannot be found fault with.

12. Accordingly, this Civil Revision Petition is dismissed and the Order passed by the learned IV Additional District Judge, Erode District at Bhavani in I.A. No.3 of 2020 in O.S. No.7 of 2018 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
ab/ssn



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P.T. ASHA, J.,

ab/ssn

To

1. The IV Additional District Judge,
Bhavani,
Erode District.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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