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C.R.P.(PD) No.1140 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P.(PD).No.1140 of 2022

and

C.M.P.No.5934 of 2022

M.K.Selvaraj

... Petitioner

Vs.

P.Venkatesan

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the order of the Sub-Court, Nagapattinam dated 21.12.2021 made in C.M.A.No.4 of 2018 in I.A.No.864 of 2017 in O.S.No.170 of 2017.

For Petitioner : Mr.S.Saravanan

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Sub-Judge, Nagapattinam dated 21.12.2021 made in C.M.A.No.4 of 2018 in I.A.No.864 of 2017 in O.S.No.170 of 2017.

2. The revision petitioner as plaintiff has filed the suit in O.S.No.170 of 2017 for the relief of mandatory injunction directing the defendant to hand over the possession of the suit property. During the pendency of the



suit, the revision petitioner has also filed an interlocutory application in I.A.No.864 of 2017 for a temporary injunction restraining the respondent from alienating or encumbering the suit property in favour of the third party until disposal of the suit.

3. The learned trial Judge allowed the interlocutory application on 24.02.2018. Aggrieved over that the respondent preferred C.M.A.No.4 of 2018 and the same was allowed on 21.12.2021. Aggrieved over that, this revision petitioner has preferred this revision.

4. The learned counsel for the petitioner submitted that the petitioner was a tenant under the respondent in the suit property. The respondent has preferred an eviction proceedings in R.C.O.P.No.7 of 2002 for evicting the revision petitioner from the suit property on the ground of willful default. The said petition was dismissed on 25.11.2004 and the respondent/landlord had taken up an appeal in R.C.A.No.2 of 2015 and the same was also dismissed before the Sub-Court, Nagapattinam. The landlord again preferred Civil Revision Petition in C.R.P.(NPD).No.1834 of 2005 before this Court and the same was allowed on 24.06.2010. The tenant preferred an



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Special Leave Petition before the Hon'ble Supreme Court in Special Leave Petition (Civil) No.31556 of 2010 and the S.L.P. was disposed of on 12.08.2016 on the undertaking given by the respondent that he is ready to rent out one shop in the shopping complex proposed to be constructed by him in the larger extent of the suit property. Subsequently, the revision petitioner filed a suit in O.S.No.170 of 2017 by alleging that the respondent violated the undertaking and he was attempting to sell away the suit property to third parties and prayed relief of mandatory injunction, directing the respondent to hand over the possession of the portion of the suit property in terms of the orders of the Hon'ble Supreme Court in Special Leave Petition (Civil) No.31556 of 2010, dated 12.08.2016.

5. In fact, in the order of the Hon'ble Supreme Court, a preferential time limit for a period of six months was fixed for handing over the possession of the premises to the respondent, after completing the construction. If the order of the Hon'ble Supreme Court is violated, the remedy is open to the respondent is by way of filing an execution proceedings for contempt and to enforce the order of the Court.



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6. However, the petitioner had chosen to file the suit for mandatory injunction and in which he has also filed interlocutory application restraining the respondent from encumbering the suit property. There is no dispute about the ownership of the suit property. Even as per the consistent contention of the revision petitioner is that he was the tenant under the respondent.

7. The order of the Hon'ble Supreme Court dated 12.08.2016 would only confer a tenancy right on the petitioner and the petitioner cannot claim any other right in the suit property. Being a tenant, he has a limited interest and he does not have any title in the suit property. In such circumstances, he cannot seek a relief for permanent injunction as against the true owner from alienating or encumbering the suit property in the manner preferred by the owner.

8. At the best the revision petitioner ought to have filed the appropriate proceedings for enforcing the order of the Hon'ble Supreme Court, by adding subsequent purchaser, if any also as a party to the proceedings. But, he cannot prevent his landlord from encumbering the



property belongs to him suiting to his financial needs.

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9. The learned Sub-Judge, Nagapattinam has rightly appreciated the legal position and allowed the C.M.A.No.4 of 2018 in I.A.No.864 of 2017 in O.S.No.170 of 2017 by reversing the order of interim injunction granted by the trial Court.

10. In view of the above stated reasons, I do not find any ground for interference.

11. Hence, the Civil Revision Petition is dismissed and the order of the Sub-Court, Nagapattinam, dated 21.12.2021 made in C.M.A.No.4 of 2018 in I.A.No.864 of 2017 in O.S.No.170 of 2017, is hereby confirmed. No Costs. Consequently, connected civil miscellaneous petition is closed.

09.06.2022

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



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R.N.MANJULA, J.,

ssn

To

1. The Sub-Court,
Nagapattinam.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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