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CRP.No.3620 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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1.K.C.Anusuya Devi
2.C.Ramani

... Petitioners

Vs.

1.M.Kabali
2.J.Gnansekaran @ Gunasekaran

... Respondents

PRAYER: Civil Revision petition is filed under Section 115 of CPC praying to set aside the judgment and decree made in OS.No.4980 of 2013 dated 26.10.2015 on the file of the III Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.P.Gopalan

For Respondents : No appearance

ORDER

This civil revision petition is filed to set aside the judgment and decree made in OS.No.4980 of 2013 dated 26.10.2015 on the file of the III Assistant Judge, City Civil Court, Chennai, thereby dismissed the suit.

2. The petitioners filed suit in OS.No.4980 of 2013 under Section 6



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of the Specific Relief Act for recovery of possession of the suit property and

cost. The case of the plaintiffs is that the suit property belongs to Theerthapaleeswarar Thirukovil and the same was leased out to K.C.Chakrapani Naicker i.e. the father of the plaintiffs. He had put up construction in the suit property. Therefore, the superstructure alone belongs to him and after his demise on 02.12.1971, the plaintiff's brothers also died. Therefore, the plaintiffs alone are in continuous possession and enjoyment of the subject property. While being so, when the plaintiffs were out of their house, the defendants came to the suit property and put up lock by removing the plaintiffs' lock. Thereafter the plaintiffs also lodged complaint and the same was closed as civil in nature. Hence the suit. The second defendant was set *exparte* and the first defendant alone filed written statement.

3. The crux of the written statement of the first defendant is that the plaintiffs were not in possession and enjoyment of the suit property. Their father had three sons. They died leaving behind nine legal heirs. The second defendant is the son of one of the brothers of the plaintiffs. The first defendant also denied that the plaintiffs were dispossessed from the property on 10.03.2013. The suit property was unused and it was in dilapidated condition.



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The plaintiffs were never in possession of the suit property. The second defendant and others were living away from the suit property and as such they decided to lease out the property in favour of the first defendant and he had taken possession of the property for lease for a period of five years. Thereafter the first defendant carried out all the repair works on 30.03.2013. The plaintiffs are unknown to him and they attempted to trespass into the suit property. Hence, he prayed for dismissal of the suit.

3.1 The trial court framed two issues: (i) Whether the plaintiff is entitled for recovery of possession of the suit property from the defendants as prayed for? and (ii) To what other relief? In order to prove the case, the plaintiffs had examined PW1 to PW3 and marked Ex.A1 to A18. On the side of the defendants, they had examined DW1 and DW2 and marked Ex.B1. On perusal of oral and documentary evidence, the trial court found that the plaintiffs are not entitled for any relief and dismissed the suit. Aggrieved by the same, the present civil revision petition has been filed.

4. Mr.P.Gopalan, the learned counsel for the petitioners would submit that the plaintiffs had marked Ex.A1 to Ex.A18. There was difference



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in the address mentioned in all those documents such as ration card, electricity card, property tax receipt, etc. Therefore the trial court mechanically came to conclusion that the petitioners failed to prove their case. He further submitted that the petitioners produced documentary proof to show that they were in possession and enjoyment of the suit property. It is located in Hamilton palam street / Barbers bridge. Both related to the same property and due to Government decision, it was changed by time to time. However without considering those documents, the trial court disbelieved the case of the petitioners.

4.1 He further submitted that the petitioners were in possession and enjoyment of the subject property. The land belongs to the temple and it was leased out in favour of their father. He had put up construction and after his demise and their brothers' demise, the petitioners alone were in possession and enjoyment of the suit property. The petitioners were dispossessed from the suit property on 10.03.2013. Immediately, the petitioners lodged complaint on 11.03.2013 on the file of the Inspector of Police, D3 Ice House Police Station, Chennai-5. The petitioners were issued CSR No.51 of 2013. However, after conducting enquiry, the police personnels concluded that the issues between



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the petitioners and the respondents herein are civil in nature and directed to approach the concerned court for appropriate relief. In fact, closure report was not served on the petitioners. Therefore they filed direction petition before this Court in CrI.OP.No.11130 of 2013 for direction directing the concerned police to register FIR on their complaint dated 11.03.2013. Before this Court, the police personnel informed that already the complaint was enquired and the same was closed as civil in nature. Thereafter, the closure report was obtained through Right to Information Act by the petitioners.

4.2 He further submitted that the first defendant was examined as DW1 and he categorically deposed that he was put in possession only on 27.03.2013 under lease agreement. Therefore, after dispossessing the petitioners, the second defendant had taken possession of the property and thereafter they created lease deed as if the property was leased out in favour of the first defendant. Therefore, the petitioners categorically proved the ingredients as contemplated under Section 6 of the Specific Relief Act.

5. Heard, Mr.P.Gopalan, the learned counsel appearing for the petitioners. Though notice was served on the respondents and their names are



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printed in the cause list, no one appeared on behalf of the respondents before this Court in person or through pleader.

6. On perusal of the records, revealed that admittedly the land belongs to Theerthapaleeswarar Thirukovil and the same was leased out in favour of the petitioners' father. He had put up construction and he died. After his demise, the petitioners' brothers also died and the petitioners were in possession and enjoyment of the suit property. In order to prove their possession and enjoyment of the suit property, they marked Ex.A1 to Ex.A7. On perusal of documents, revealed that Ex.A1 is the voter identity card of the first petitioner, Ex.A2 is the family card of the plaintiffs. Ex.A3 is the property tax demand card of the plaintiffs. Water and sewerage tax card was marked as Ex.A4. Electricity card of the property was marked as Ex.A5. Electricity bill receipt was also marked as Ex.A6. Gas connection receipt was marked as Ex.A7. In all the documents, they mentioned the address as Hamilton Palam, fourth lane, Dr.Natesan Salai, Triplicane, Chennai. Thereafter it was changed as Barbers bridge. In tamil, it was known as 'ambattan bridge'. It related to one particular community and as such, it was changed as Hamilton Palam. However it is door No.2/3, Fourth lane, Triplicane, Chennai. Therefore all the



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addresses are one and the same and it shows that the petitioners were in possession and enjoyment of the suit property. The trial court mechanically concluded that all the addresses are not corroborating each other and dismissed the suit. The telephone bills, voters identity card, ration card, gas bill, electricity receipt are vital documents to prove the possession of the said property.

7. In order to succeed in a summary suit filed for restitution to possession under Section 6 of Specific Relief Act, the plaintiffs ought to have established that they were in exclusive possession of the disputed property, that the disputed property is an immovable property, that the plaintiff was dispossessed within six months before the date of the suit, that the dispossession was effected without the consent of the plaintiffs, that the dispossession was effected otherwise than under due course of law and that the dispossession is by one other than the Government.

8. In the case on hand, the petitioners categorically proved that they were in possession and enjoyment of the suit property. It is an immovable property. They were dispossessed on 10.03.2013 and immediately the



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petitioners lodged complaint on 11.03.2013 and they were issued CSR.No.51

of 2013. In fact, thereafter it was not registered and as such, the petitioners were constrained to file a direction petition before this Court in CrI.OP.No.11130 of 2013 and this Court by order dated 03.06.2013 recorded the submissions of the Public Prosecutor that the Inspector of Police, D3 Ice House Police Station, after conducting enquiry, closed CSR as civil in nature. Therefore, this Court closed the direction petition. Thereafter the petitioners obtained closure report under Right to Information Act through their counsel. The present suit was also filed in time. Therefore, the petitioners proved their case in accordance with law and the trial court ought to have allowed the suit.

9. In view of the above, the judgment and decree made in OS.No.4980 of 2013 dated 26.10.2015 on the file of the III Assistant Judge, City Civil Court, Chennai are set aside and the suit filed in OS.No.4980 of 2013 on the file of the III Assistant Judge, City Civil Court, Chennai is allowed. The respondents are directed to vacate the suit premises and hand over the same to the petitioners within a period of twelve weeks from today.



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10. In the result, this civil revision petition stands allowed. There shall be no order as to costs.

06.12.2022

Index : Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
The III Assistant Judge,
City Civil Court, Chennai.

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