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CRP. No.2564of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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1.V.Palanivel
2.S.Selvarani
3.K.Jayalakshmi
4.R.Suseela
5.Soundarrajan
6. S.Vijayalakshmi

...Petitioners

Vs.

1.K.Ravi
2.K.Sundar
3.K.Bhaskar
4.K.Kala
5.K.Maheswari

...Respondents.

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair order and decreetal order dated 19.04.2017 passed in I.A No.21 of 2017 in C.M.A No. 15 of 2017 on the file of the Subordinate Judge, Tambaram.

For P1, P2, P5 and P6	: Mr.T.Sundar Rajan
For P3 and P4	: Mr.P.Satheesh Kumar
For R1 to R5	: Mr.N.Manokaran for P.Krishnan



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ORDER

Challenging the impugned order passed passed by the Sub Judge, Tambaram, in I.A No.21 of 2017 in CMA No.15 of 2017 in O.S No.259 of 2014 the defendants preferred this Civil Revision Petition.

2. The facts reveals that respondents herein/plaintiffs filed suit in O.S No. 259 of 2014 on the file of the Principal District Munsif, Alandur for the relief of bare injunction. In that suit the Trial Court dismissed the application in I.A No. 459 of 2014 in O.S NO. 259 of 2014 filed by the plaintiff for the relief of interim injunction.

3.Challenging the order in I.A No.459 of 2014 the plaintiffs preferred C.M.A No. 15 of 2017 before the Sub Court, Tambaram, and the defendant raised objection for that and the plaintiff filed I.A No. 21 of 2017 in C.M.A No. 15 of 2017 for relief of interim injunction. After considering the rival submission the learned Subordinate Judge, Tambaram granted order of status quo. Aggrieved over that findings the defendants preferred this Civil Revision Petition.



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4. The learned counsel for the petitioner submitted that the lower

Court failed to take note of the fact that who is in possession of the property and failed to prove any *prime facie* case for grant of injunction hence the granted order status quo as such is totally erroneous one and liable to be set aside.

5. By way of reply the learned counsel for the respondent/plaintiff submitted that this Civil Revision Petition is not maintainable for the reason that if any order passed under Order 39 Rule 1 of CPC is to be challenged by way of appeal not by way of revision to that effect he relied the proposition laid down by the *Hon'ble Supreme Court in the case of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs Tuticorin Educational Society and others in 2019 9 SCC 538:*

6. In the above referred case, it also necessitated that wherever the proceedings are under the Code of Civil Procedure and the forum is civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Therefore, it indicates that when remedy is available for the revision petitioner not by invoking Article 227 of Constitution of India,



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they can avail their remedy by invoking under Section 104(1) (i) r/w Order 43, rule 1(r) of the Code of Civil Procedure, 1908. Therefore the revision as such is not maintainable. Further, *status quo* ordered by the Sub Court, Tambaram in I.A No.21 of 2017 is in force till disposal of CMA No.15 of 2017.

7. Further, the learned counsel for the 3 and 4 petitioners submitted that their brother Palanivel fabricated their signature conducted the suit proceedings including CRP proceedings before this Court and also the sisters who appeared before this Court stated that without their knowledge he included them in the proceedings and they were not aware about the proceedings. On seeing the facts of the case the most of the parties are senior citizens approached the Court for remedy but the dispute between the parties are not reached finality. Hence, the Trial Court is directed to dispose the case within six months and the liberty is given to third and fourth respondent to raise objection about the contact of their brother as per manner known to law.



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8. For the foregoing reasons, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

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