



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.306 of 2017
and
CMP.No.1402 of 2017

D.Selvam

... Petitioner / 1st respondent/Plaintiff

Vs.

1.M.K.Muthurajan

... 1st Respondent / Petitioner / 1st Defendant

2.A.Parasuraman

...2nd Respondent / 2nd Respondent / 2nd Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 18.04.2016 made in I.A.No.415 of 2016 in O.S.No.175 of 2014 on the file of the Court of District Munsif-cum-Judicial Magistrate, Sriperumbudur, Kancheepuram District.

For Petitioner .. Mr.B.Dayaalan

For R1 .. Mr.T.Sundar Rajan



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ORDER

The Civil Revision Petition has been filed by the plaintiff in O.S.No.175 of 2014, which suit is now pending on the file of the District Munsif cum Judicial Magistrate Court, Sriperumbudur, Kancheepuram District, aggrieved by the order dated 18.04.2016 in I.A.No.415 of 2016. O.S.No.175 of 2014 had been filed by the present revision petitioner herein / plaintiff, against the 1st and 2nd defendants, M.K.Muthurajan and A.Parasuraman, seeking a judgment and decree against the 1st defendant, M.K.Muthurajan from interfering with the peaceful possession of the property which had been described as C-schedule and which is part of A-schedule property.

2.The A-schedule property given in the plaint is land measuring 33 cents out of a larger extent of 87 cents in Wet Survey No.45/3 at Kovur Village in Sriperumbudur in Kancheepuram District. There is also a building in that particular land and also a thatched shed with electricity connection. It has old Door No.53/3 and New Door No.6/5 and the address is Sekkadi Street, Kovur Village, Chennai – 600 128. The C-schedule property for which injunction had been sought, measures 2,000

Sq.ft. out of the larger area of 33 cents and is also situated in Wet



S.No.45/3 and there is also a thatched shed and again bears Old Door No.53/03 and New Door No.6/5 in Sekkadi Street, Kovur Village, Chennai – 600 128.

3.The claim of the plaintiff was that the 2nd defendant A.Parasuraman and his brother had partitioned the joint family property and the 2nd defendant had obtained A – schedule property and the plaintiff and the 2nd defendant had entered into a monthly rental agreement and the plaintiff took possession of the C-schedule property which measures 2000 sq.fts from the 2nd defendant. It is the claim of the plaintiff that he has been in possession. Seeking protection of such possession from the 1st defendant, the suit had been instituted.

4.The suit summons had been issued to the 1st defendant. It transpires that the 1st defendant has a residence address and also has an office at Kovur Village. With respect to the suit schedule property and the address therein, it is the claim of the 1st defendant that the 1st defendant has nothing to do with the said property and that his son is independently carrying on business.



5.This fact is denied by the plaintiff, who claims that suit summons had served on the 1st defendant in the address as given in the plaint, namely, the C-schedule property of the plaintiff and therefore, non-appearance before the Trial Court, was without any reason and cannot be sustained.

6.The 1st defendant had been set ex-parte. He then filed I.A.No.415 of 2016 to set aside the ex-parte order. The said application came up for consideration on 18.04.2016 and the District Munsif, Sriperumbudur, had thought it prudent to allow the Interlocutory Application. He also imposed costs of Rs.500/- to be paid to both the plaintiff and the 2nd defendant.

7.It is the claim of the learned counsel for the 1st respondent herein that cost had been deposited in Court.

8.The Learned counsel for the revision petitioner, questions the propriety of the order passed on the ground that summons had been served and no plausible reason or acceptable reason has been given for non-appearance before the Court. It is stated that the 1st respondent in the



Revision Petition had received the notice in the address in which he is carrying on business, and therefore, the contention that the son is carrying on business at the address is not a correct statement. As a matter of fact, learned counsel alleges that the averments in the affidavit are false to the knowledge of the 1st respondent.

9. This statement by the learned counsel is vehemently disputed by the learned counsel for the 1st respondent who states that, as a fact he has a separate place of residence and he has a separate place for his office and that the address to which the suit summons sent is a factory in which his son is carrying on business. These facts revolve around issues of facts and these are issues which had not been addressed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur.

10. Moreover, establishment of these facts would require the parties have to graze the witness box stating the particular facts in the witness box and subjecting themselves for cross-examination. Necessary records are to be produced and the records produced would include whether the son is carrying on business at the property mentioned in the suit schedule or whether the 1st respondent is carrying on business. This requires evidence to be recorded.



11. Therefore, I would set aside the order dated 18.04.2016 and direct the District Munsif cum Judicial Magistrate, Sriperumbudur, to permit the parties to enter into witness box and produce documents and test those documents regarding their admissibility, relevancy and also examine whether the documents are proved in manner known to law and subject oral evidence to cross-examination and thereafter, come to a considered decision whether to allow the I.A.No.415 of 2016 or to dismiss the same.

12. The costs amount which had been deposited in Court may be withdrawn by the 1st respondent by filing a proper memo and let further orders be passed by the District Munsif cum Judicial Magistrate, Sriperumbudur, on the basis of the evidence adduced by both the parties.

13. In view of the aforesaid reasons, the Civil Revision Petition is allowed. The order dated 18.04.2016 in I.A.No.415 of 2016 is set aside and the matter is remanded back to the District Munsif cum Judicial Magistrate Court, Sriperumbudur to rehear I.A.No.415 of 2016 by directing the parties to graze the witness box and thereafter, pass necessary orders. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.



14.The statement of the learned counsel for the 1st respondent that the suit summons had not even been served on the address given in the suit property is also to be examined.

21.03.2022

Internet:Yes/No

Index:Yes/No

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To

The Court of District Munsif cum Judicial Magistrate, Sriperumbudur.



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C.V.KARTHIKEYAN,J.

Smv

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