



CRP.No. 1210 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.03.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

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and

CMP.No. 9342 of 2021

Pollachi Municipality
Represented by its Commissioner

... Petitioner

Versus

A. Abdul Sathar

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 16.02.2021 passed in I.A.No. 455 of 2018 in O.S.No. 54 of 2016 on the file of the learned District Munsif, Pollachi.

For petitioner : Mr.A.S. Thambuswamy

For Respondent : Mr.G.A. Adhippathi (LCC)
No Appearance

ORDER

The revision petitioner herein is the defendant and the respondent herein is the plaintiff in the suit in O.S.No.54 of 2016.



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2. The suit in O.S.No. 54 of 2016 was filed by the respondent

herein praying for the relief of declaration to declare that the notice dated 25.01.2016 in Na.Ka.No.8736/A6 issued by the defendant/Municipality is unsustainable and for consequential permanent injunction restraining the defendant/Municipality in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. According to the respondent/plaintiff he was inducted as a lessor by the defendant/Municipality on 04.09.1990 even according to the plaintiff the lease was only for a period of four months 01.11.1990 to 31.03.1991 on a daily rent of Rs.20/-. According to the respondent/plaintiff he is running a Tiffin Stall in the name and style of Sattar Hotel from 1990 till the date of instituting the suit. During the year 2008 a notice dated 11.12.2008 was issued calling upon the plaintiff to vacate the premises in question. However, no further action was taken. Thereafter, in the year 2013 the defendant/Municipality attempted to evict the plaintiff from the possession and therefore, the respondent/plaintiff has filed a W.P.No.32685 of 2013 before this Court in which a direction was issued to the defendant/Municipality to consider his claim of the respondent/plaintiff by following due process of law. Pursuant to the order dated 10.12.2015



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passed by this Court, the defendant/Municipality issued the notice dated 25.01.2016 calling upon the plaintiff to remove the superstructure and handed over the vacant possession to them within fifteen days. Aggrieved by the notice dated 25.01.2016 the respondent/plaintiff instituted the suit.

4. The suit was resisted by the defendant/Municipality by filing counter. According to the defendant, the notice dated 25.01.2016 was issued in compliance with the principles of natural justice and taken up in order to in question by the plaintiff. In fact, in the plaint, the plaintiff gone into the title and ownership of the defendant/Municipality the fact remains that the defendant is the owner of the property which is in occupation of the plaintiff. The plaintiff has not produced any document to show that he has paid lease rental amount after 1991. In any event, the plaintiff was inducted as a lessee by virtue of a resolution dated 04.09.1990 in which it was specifically stated and undertaken by the plaintiff that he will hand over the vacant possession of the property to the defendant/Municipality as and when demanded. In any event, the notice dated 25.01.2016 is only a show cause notice calling upon the plaintiff to vacate and hand over the vacant possession of the property in question. Therefore, the defendant/Municipality prayed for dismissal of the suit.



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5. During the pendency of the suit, it is alleged by the respondent/plaintiff that the defendant/Municipality had forcibly taken the possession of the superstructure put up by him and the suit itself was filed questioning the enforceability of the notice dated 25.01.2016. During the pendency of the suit when the superstructures were removed forcibly by the defendant/Municipality. The plaintiff is left with no other option to seek for the amendment of the pleadings to include a prayer for recovery of possession as well. Accordingly, the plaintiff sought for amending the pleadings to include the relief of recovery of possession within specified date. In the application for amendment of the plaint, a counter affidavit was filed by the defendant/Municipality specifically stating that the amendments sought for are altered and vary the pleadings sought for in the suit, which is legally impermissible. As per the Municipality laws the notice dated 25.01.2016 was served upon the plaintiff calling upon him to vacate and hand over the vacant possession of the suit property in his occupation. However, by preventing the Municipality from taking possession, the suit has been instituted by the defendant in the year 2006 when the plaintiff is not in a possession of the property in question and when he is a lessee of the property. He has no right to seek for recovery of



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possession. The proposed application is silent with respect to the Court fee payable by the plaintiff if the amendment is also. In any event the suit itself is vexatious, and by virtue of which the defendant/Municipality could not enforce their illegal rights as against the respondent/plaintiff. The defendant/Municipality therefore, prays for dismissal of the application.

6. The trial Court on considering the rival submissions has concluded that the suit was filed challenging the notice issued by the defendant/Municipality and during the pendency of the suit, the plaintiff was alleged to have been evicted forcibly. Whether the eviction of the plaintiff was forcible by following the due process of law can be examined only at the time of trial in the suit. Further, whether the plaintiff is entitled for recovery of possession or not is also a matter for trial and accordingly, also the application for amendment.

7. The learned counsel appearing for the revision petitioner would contend that the suit itself was filed for a permanent injunction and declaration to declare that the notice dated 25.01.2016 is legally unenforceable under law. In the application for amendment the plaintiff



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has alleged that he was forcibly evicted by removing the superstructure put up by him. According to the learned counsel, pursuant to the notice dated 25.01.2016 eviction was carried on by following the due process of law. In any event the revision petitioner/Municipality is the lawful owner of the property in question. The suit was not filed for a declaration to declare that the defendant is the owner of the property in question.

8. On the other hand, the revision petitioner himself admitted that he was inducted as a lessee in the year 1990 for a period of only four months even at that time the respondent/plaintiff agreed to hand over the vacant possession of the property to the defendant/Municipality as and when demanded. Having given such an undertaking it is not open to the respondent/plaintiff to institute the suit at all. While so if the amendments are allowed it will cause much prejudice and hardship to the revision petitioner/Municipality. The trial Court without taking note of the fact that the respondent/plaintiff was only lessee in the property has permitted to amend the plaint to include the relief of recovery of possession. In any event for recovery of possession, the plaintiff has not suitably amended the portion of the plaintiff relating to payment of Court fee. The present application has been filed only to drag on the proceedings which was lost



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sight of by the trial Court. The learned counsel for the revision petitioner, therefore, prays for allowing this Civil Revision Petition.

9. There was no representation for the respondent eventhough the claim of the respondent/plaintiff is printed in the cause list.

10. It is an admitted fact that the plaintiff was inducted as a lessee in the property in question by the revision petitioner/Municipality for a period of four months. In the year 1990, however, the respondent/plaintiff due to remain in occupation of the property in question for about three decades. However, when a notice dated 25.01.2016 was issued by the revision petitioner/Municipality it was put to challenged by the respondent/plaintiff undertaken that the notice dated 25.01.2016 itself was issued interfered with the principles of natural justice.

11. Be that as it may, the instant application for amendment under Order VI Rule 17 of the Code of Civil Procedure has been filed to include the relief of recovery of possession. Admittedly, the respondent/plaintiff herein is only a lessee and he is not the owner of the property in question. The property originally belongs to the revision petitioner/Municipality.



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The respondent has not filed the suit for a declaration to declare that he is the owner of the property in question. On the other hand, the suit was filed challenging the notice dated 25.01.2016 issued by the petitioner/Municipality. During the pendency of the suit, the revision petitioner said to have vacated the respondent/plaintiff from the property in question. While so, the present application has been filed to include the relief of recovery of possession is ill-founded. The suit was originally filed only for a permanent injunction and consequential declaration to declare that the notice dated 25.01.2016 as void. The suit was filed on the premises that the plaintiff was a lessee under the revision petitioner/Municipality. While so there is no scope for allowing the plaintiff to include the relief of recovery of possession in the plaint. The trial Court without considering the above has erroneously allowed the application filed by the respondent herein.

12. For all the above reasons, the order dated 16.02.2021 passed in I.A.No. 455 of 2018 in O.S.No. 54 of 2016 on the file of the learned District Munsif, Pollachi, is set aside.



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13. Accordingly, the Civil Revision Petition is allowed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

24.03.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation: Yes/No.

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To

1. The District Munsif, Pollachi.

2. The Section Officer, High Court of Madras.



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V.BHAVANI SUBBAROYAN, J.

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