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C.R.P.No.1747 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

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THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No.1747 of 2020
and
CMP.No.10792 of 2020

1. M.P.Muniharinatha @ Munusamy
2. Nazar

.. Petitioners

Versus

P.Kumaramoorthy

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 10.02.2020 passed in I.A.No.3 of 2019 in O.S.No.5989 of 2019 by the learned XI Assistant Judge, City Civil Court at Chennai.

For Petitioners	:	Mr. P. Wellington
For Respondent	:	Mr. K.N. Nataraj for Ms. T. Hemalatha

ORDER

The first and second defendants in O.S.No.5989 of 2019 on the file of XI Assistant Judge, City Civil Court, Chennai have come forward with this Civil Revision Petition aggrieved by the order dated 10.02.2020 passed in I.A. No. 3 of 2019 in O.S. No. 5989 of 2019.



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2. The respondent/plaintiff has filed the suit for the relief of bare injunction to restrain the revision petitioners herein from interfering with his peaceful possession of the suit property without following due process of law.

3. In the suit, it was stated by the respondent that he was inducted as a tenant in the suit premises in the year 2009 for a monthly rent of Rs.550/- and paid an advance of Rs.5,000/- to the first defendant in the suit. It is further stated that during the year 2012, the first defendant, who was also residing in one of the portions adjacent to the suit property, has vacated his portion of the premises and his whereabouts, were not known. With the result, the plaintiff could not pay the rent to the first defendant. While so, on 23.06.2019, the defendants along with henchmen demolished a portion of the suit property and therefore, he has given a complaint to the police on 23.06.2019, but no action has been taken thereof. Therefore, he has filed the present suit.

4. On notice, the revision petitioners herein have filed the instant application in I.A. No. 3 of 2019 under Order 7 Rule 11 of CPC. In the application, it was vehemently contented that the respondent/plaintiff failed to pay the rent. A lawyer notice was sent on 23.01.2012 to hand over the vacant possession to which a reply notice dated 07.02.2012 was sent by the plaintiff



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containing false averments. After exchange of notice, the second defendant sold the suit property in favour of his wife viz., Fathima Bi by registered sale deed dated 25.03.2013 and demanded the vacant possession of the suit property from the plaintiff. Above all, it was stated that as on the date of filing the suit, the plaintiff is not in a possession of the suit property at all. While so, the relief of bare injunction sought for by him does not survives for consideration. Therefore, it is submitted that there is no cause of action to institute the suit and the plaint has to be rejected.

5. In the application in I.A. No .3 of 2019, the plaintiff himself files a counter affidavit in which, it was specifically stated as follows:-

“6. The respondent/plaintiff also denies the allegations mentioned in para 13, 14, 15, 16, 17, 18 and 19 since the same are baseless. The respondent/plaintiff has al proofs to show that he was in occupation and possession of the suit premises till March 2019 after which the petitioner/defendant had dispossessed the respondent/plaintiff by demolishing and taking away all the belongings of the respondent/plaintiff illegally. The respondent/plaintiff admits the date of demolition but strongly disapproves the averment that it was vacant since he was in



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possession till 23.06.2019.

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7(h) The respondent has been dispossessed of his occupation of the suit premises forcefully when he had left for work on 23.06.2019 and has been mercilessly sent to the roads while he is a tenant in the premises.”

6. The trial Court inspite of specific averments in the counter affidavit filed by the respondent/plaintiff himself that he was dispossessed from the suit property has concluded that the issues sought to be adjudicated in the suit have to be considered only at the time of trial and accordingly dismissed the application under Order 7 Rule 11 of CPC.

7. Heard the learned counsel for both sides and perused the materials placed on record.

8. Even as per the admission of the respondent/plaintiff, he was dispossessed from the petition mentioned property on 23.06.2019. This is explicit from the counter affidavit filed by the respondent/plaintiff himself. Thus, the respondent/plaintiff admitted that he was dispossessed from the petition mentioned property and he is no longer in occupation of the petition



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mentioned premises. When the respondent/plaintiff himself admitted that he is not in possession of the premises in question, there is nothing available for adjudication in the suit itself for bare injunction. For claiming injunction, it is essential that the person who claims such relief must be in possession of the suit property and also to show that his possession is sought to be disturbed. This twin most essential requirements for instituting the suit for bare injunction is absent in the present case. The application under Order VII Rule 11 of CPC has been filed mainly on the ground that there is no cause of action for instituting the suit especially when the plaintiff himself is not in possession of the premises in question. While so, the conclusion of the trial court as though there are triable issues involved in the suit and such issues could be adjudicated only during trial, cannot be legally sustained.

9. In the light of the admission made by the respondent/ plaintiff himself in the counter affidavit filed in the application in I.A. No. 3 of 2019, there is nothing survives for adjudication in the suit. While so, the trial Court ought to have struck down the plaint by allowing the application filed under Order 7 Rule 11 of CPC. On the contrary, the Court below dismissed such application and it warrants interference by this Court.



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WEB COPY 10. In the result, this Civil Revision Petition stands allowed. The order dated 10.02.2020 made in I.A. No. 3 of 2019 in O.S. No. 5989 of 2019 on the file of XI Assistant Judge, City Civil Court, Chennai is set aside. The plaint in O.S.No. 5989 of 2019 is struck off. Consequently, the connected Miscellaneous Petition is closed. No costs.

30.01.2023

kv

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

1. The XI Assistant Judge
City Civil Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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V. BHAVANI SUBBAROYAN, J

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