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C.R.P.(PD)No.2240 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(PD)No.2240 of 2020

and

CMP.No.14105 of 2020

1.Galaxia Enterprises,  
(Regd Partnership firm vide No.227/2011)  
Rep by its Managing Partner,  
Mangalatchoumy, D/o Appavou,  
No.9, Tennis Tower, 4<sup>th</sup> Main Road,  
Basant Ngar, Chennai-600 090.  
(As per CMA Cause title)

2.Mangalatchoumy (Died)

3.Razendhiran Maleappane  
(Petitioner-2 Died. Petitioner-3 brought on record as  
LRs of the deceased P-2.Viz Mangalatchoumy vide  
Court order dated 26.10.2022 made in CMP.No.5699 of 2012  
in CRP.No.2240 of 2020)

4.Radjy Malleappane

5.Amouda Malleappane  
(Petitioners 4 and 5 brought on record vide  
Court order dated 25.08.2023 made in  
CMP.No.17102 of 2023 in CRP.No.2240 of 2020)

.. Petitioners

VS



C.R.P.(PD)No.2240 of 2020

1.Pratap Pierre Gerard De Condappa,  
(as per CMA cause title)

2.Pierre Elouard

.. Respondents

Petition filed under Article 227 of the Constitution of India to set aside fair and decreetal Order dated 31.07.2019 passed in C.M.A.No.8 of 2018, on the file of the Additional Sub Court at Puducherry reversing the fair and decreetal order dated 07.04.2018 passed in I.A.No.917 of 2017 in O.S.No.2347 of 2017, on the file of the I Additional Munsiff Court at Puducherry.

For Petitioners : Mr.Srinath Sridevan, Senior Counsel  
for Mr.C.Vigneswaran

For Respondents : Mr.R.Thiyagarajan (for R1)

Mr.K.Chandrasekaran (for R2)

### **ORDER**

O.S.No.2347 of 2017 is a suit for bare injunction.

2.The case of the plaintiffs is that the first defendant is the owner of the property. Originally the second defendant took the property on tenancy with the first defendant in the year 2000. In 2011, the first plaintiff was created as a partnership firm consisting of the second plaintiff and the second defendant.

3.It is the averment of the plaintiffs that on and from 2011 that is the creation of the partnership firm. The partnership firm became a direct



*C.R.P.(PD)No.2240 of 2020*

tenant under the first defendant. The first defendant initiated proceedings for fixation of fair rent in RCOP.No.53 of 2012. Only the second defendant was shown as a respondent in that proceeding and therefore, the civil revision petitioners attempted to implead in the HRCOP. The impleading petition has been dismissed.

4.In the meantime, the second defendant surrendered the possession to the first defendant on 31.10.2017. The surrender was voluntary and is not by way of any Court proceeding. Since the possession of the plaintiffs was being disturbed at the instance of the first defendant, the plaintiffs came forward with the suit.

5.It is the case of the first defendant that the civil revision petitioners are not his tenants and it is the second defendant, who is his tenant and he had voluntarily surrendered the possession of the property and that he is in possession of the property today.

6.Asserting that the plaintiffs are in possession of the property, O.S.No.2347 of 2017 was presented. In this suit, written statement was filed immediately by both the first as well as the second defendants. Pending the suit, the plaintiffs sought for an order of injunction in I.A.No.917 of 2017.

7.The learned Judge permitted the parties to mark documents



*C.R.P.(PD)No.2240 of 2020*

before them and took up the application for hearing. He did not grant injunction to the entire extent of the property, but granted an order of interim injunction restraining the first respondent/landlord from interfering with the peaceful possession and enjoyment of the portion of the property in which the plaintiffs claim to be in possession.

8. Aggrieved by the same, a Civil Miscellaneous Appeal was preferred before the learned Additional Sub Judge in CMA.No.8 of 2018. In and by way of an order dated 31.07.2019, the appeal was allowed and the injunction application stood dismissed. Against the reversal finding, the present civil revision petition has been filed.

9. Heard Mr.Srinath Sridevan, learned Senior Counsel for Mr.C.Vigneswaran, learned counsel appearing for the petitioners, Mr.R.Thiyagarajan, learned counsel appearing for the first respondent and Mr.Chandrasekaran, learned counsel appearing for the second respondent.

10. Both Mr.Srinath Sridevan as well as Mr.R.Thiyagarajan would state that they are in possession of the property. Whether the second defendant had entered into the tenancy in his own right and continued as a tenant till 31.10.2017 or whether the partnership firm became a tenant host an oral agreement between the first defendant and himself in the



*C.R.P.(PD)No.2240 of 2020*

year 2011 are all matters, which are subject matter of trial.

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11.Suffice it to state for the present, since both parties claim to be in possession of the property and it is still at the prima facie stage without recording of evidence. I do not want to interfere with the prima facie findings given in the Civil Miscellaneous Appeal.

12.I make it clear that the findings given by the trial Court in I.A.No.917 of 2017 as well as the order passed in CMA.No.8 of 2018 are only prima facie for the purpose of finding out, who is in possession of the property.

13.The issues will be gone into independently at the time of trial without being influenced either by the order passed by the trial Court or by the lower appellate Court or by this Court at the time of final disposal. The parties shall maintain status quo prevailing as on today with respect to the suit property.

14.Since the pleadings are completed, the learned I Additional District Munsif, Pondicherry is requested to take up O.S.No.2347 of 2017 and dispose of the same within a period of four (4) months from the date of receipt of a copy of this order.

15.During the pendency of the proceeding, Mangalatchoumy passed away and her legal representatives were brought on record as



C.R.P.(PD)No.2240 of 2020

Respondents No.3 and 4 and by an order passed by me today, they have been transposed as Petitioners No.4 and 5. Since this is the revision arising against a pending suit and as I have impleaded the legal representatives of Mangalatchoumy in the present proceeding, no separate application need to be taken for impleading the said parties in the suit.

16.The order passed in the revision will enure in favour of the plaintiffs in the suit and a mere memo for amendment of plaint and bringing on record the petitioners No.4 and 5 as parties to the suit will be sufficient.

17.With the above directions, the civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**24.08.2023**  
(2/2)

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

1.The Additional Sub Court at Puducherry.

2.The I Additional Munsiff Court at Puducherry.



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*C.R.P.(PD)No.2240 of 2020*

**V. LAKSHMINARAYANAN,J.**

VS

**C.R.P(PD)No.2240 of 2020  
and CMP.No.14105 of 2020**

**24.08.2023  
(2/2)**