



CRP(PD)(MD)No.284 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.284 of 2023

and

CMP(MD)No.1352 of 2023

Nakoda Homes Pvt. Ltd.,
Rep. through its Partner
S.Bhawarlal

... 1st Petitioner

R.Shanmuganathan (died)

... 2nd Petitioner

versus

1. Thirupparankundram Arumuga
Nainar Trust,
Rep. through its Trustees S.Venugopal
S/o. Late Somasundaram Chettiar,
D.No.13/5, Ismailpuram 8th Street,
Munichalai Road, Madurai – 625 009.

2. Thirupparankundram Arumuga
Nainar Trust,
Rep. through its Trustees
T.A.S.Ramasubramanian,
S/o. Late Subramania Chettiar,
D.No.534/1-A, Santhi Nagar 22nd Street,
Palayamkottai, Tirunelveli.



CRP(PD)(MD)No.284 of 2023

WEB COPY

3. Thirupparankundram Arumuga
Nainar Trust,
Rep. through its Trustees
S.Durga Balakumar,
S/o. Late Somasundaram Chettiar,
D.No.6/1, Thennagaram,
Jaihindupuram,
Madurai – 625 011.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 24.01.2023 made in I.A.No.22 of 2023 in A.S.No.35 of 2021 on the file of the 2nd Additional Sub Court, Madurai.

For Petitioner : Mr.H.Arumugam

ORDER

This Civil Revision Petition is filed as against the order dated 24.01.2023 made in I.A.No.22 of 2023 in A.S.No.35 of 2021 on the file of the 2nd Additional Sub Court, Madurai.

2. The respondents/plaintiffs have filed a suit in O.S.No.976 of 2013 before the Additional District Munsif, Madurai, for the relief of



CRP(PD)(MD)No.284 of 2023

declaration and also for recovery of possession. The suit was decreed in favour of the plaintiffs, by Judgment and Decree dated 29.04.2021.

As against the same, the petitioner preferred an appeal suit before the II Additional Sub Court, Madurai, in A.S.No.35 of 2021. The petitioner has also filed an interlocutory application in I.A.No.22 of 2023 praying to stay all further proceedings in E.P.No.93 of 2021 in O.S.No.976 of 2013 on the file of the Additional District Munsif, Madurai Town, till the disposal of the appeal. The First Appellate Court, by its fair and decreetal order dated 24.01.2023, rejected the said application on the ground that it has been filed belatedly and not filed along with the appeal. As against the same, the present Civil Revision Petition is filed.

2. The learned counsel appearing for the petitioner submits that in the absence of any interim order in the appeal, the respondents/plaintiffs are disturbing the petitioner's possession and enjoyment of the property. He further submits that the petitioner is



having a good case in the Appeal Suit and therefore, the First Appellate Court, having entertained the Appeal Suit, ought to have granted interim relief of stay in favour of the petitioner/appellant. In support of his contention, the learned counsel for the petitioner has also relied upon a Judgment of the Hon'ble Supreme Court in ***Pabbathi Venkataramaiah Chetty vs. Pabbathi N.Rathnamaiah Chetty and others***, reported in ***(2007) 3 SCC 151***, wherein, it has been held as follows:

“5. The learned counsel for the appellant submits that he is in possession of the suit premises and his prayer was for interim stay of dispossession as he is running a lodge and an order of stay of demolition will not, therefore, protect his rights, pending appeal. On the other hand, the learned counsel for the first respondent submitted that the appellant has been enjoying the suit premises and though the first respondent is entitled to two-third share therein, he has been kept out of possession and he is also not receiving any income therefrom. It is not in dispute that the appellant is running a lodge in the suit premises. The appeal against



WEB COPY

final decree filed before the High Court may become infructuous if stay of dispossession is not granted. But, at the same time, the interests of the first respondent require to be protected.”

4. This Court considered the submissions made by the learned counsel appearing for the petitioner and also perused the materials available on record.

5. Admittedly, the petitioner has preferred an appeal suit in A.S.No.35 of 2021 as against the Judgment and Decree dated 29.04.2021 passed in O.S.No.976 of 2013 and the same is pending for the purpose of impleading the legal heirs of the deceased second respondent.

6. The learned counsel appearing for the petitioner submits that the petitioner is having a good case in the appeal suit and also ready to get along with the appeal.



CRP(PD)(MD)No.284 of 2023

WEB COPY

7. Considering the submissions made by the learned counsel for the petitioner, this Court is inclined to dispose of the Civil Revision Petition with a direction to the First Appellate Court to dispose of the appeal suit in A.S.No.35 of 2021.

8. Accordingly, this Civil Revision Petition is disposed of with a direction to the First Appellate Court, namely, the II Additional Sub Court, Madurai, to dispose of the appeal suit in A.S.No.35 of 2021, within a period of eight weeks from the date of receipt of a copy of this order. Till such time, status quo as on date to be maintained by the parties. No costs. Consequently, connected miscellaneous petition is closed.

07.02.2023

ogy

NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

Note: Issue order copy on 08.02.2023.



CRP(PD)(MD)No.284 of 2023

WEB COPY

To

1. The II Additional Sub Court,
Madurai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRP(PD)(MD)No.284 of 2023

B.PUGALENDHI, J.

ogy

CRP(PD)(MD)No.284 of 2023

07.02.2023