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C.R.P.(NPD)No.3122 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.3122 of 2022

and

C.M.P.No.16776 of 2022

1.T.H.Shakeel Ahmed Khan

2.T.H.Shafeeq Ahmed Khan

3.T.H.Shahid Ahmed Khan

4.T.H.Shameel Ahmed Khan

.. Petitioners

Vs.

1.A.Shahul Hameed

2.G.Balasubramanian

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 30.08.2022 in C.M.A.No.9 of 2020 on the file of the learned VII Additional Judge, City Civil Court at Chennai against the fair order dated 09.03.2020 in I.A.No.1 of 2019 in O.S.No.995 of 2019 on the file of the learned XI Assistant City Civil Judge, Chennai and consequently, allow the Civil Miscellaneous Appeal No.9 of 2020 on the file of the learned VII Additional Judge, City Civil Court at



C.R.P.(NPD)No.3122 of 2022

Chennai.

For Petitioners : Mr.V.G.Suresh Kumar

For Respondents : No Appearance

ORDER

The present Civil Revision Petition arises against an order passed in C.M.A.No.9 of 2020 on the file of the VII Additional City Civil Court at Chennai in confirming the order of the injunction granted in I.A.No.1 of 2019 in O.S.No.995 of 2019 on the file of the learned XI Assistant City Civil Court at Chennai.

2. O.S.No.995 of 2019 is a suit for bare injunction not to interfere with the possession of the plaintiff except otherwise in accordance with law.

3. The case of the plaintiff is that he is a tenant under the 1st defendant with respect to two shop portions on the ground floor of the suit schedule mentioned property. According to him, he has paid a sum of Rs.5,00,000/- as lease amount under the agreement of sale to the 1st defendant. The plaintiff claims to have lodged a police complaint on 14.02.2019 alleging that certain unknown persons are interfering with the possession of the property. Since he claims to be a statutory tenant under the 1st defendant, he



C.R.P.(NPD)No.3122 of 2022

pleads he must not be evicted except otherwise in due process of law.

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4. To this suit, he impleaded his alleged landlord as the 1st defendant and defendant Nos.2 to 4 as the owners of the properties. Having moved the suit, he has also moved an application for injunction restraining the defendants from interfering with his possession, pending disposal of the suit.

5. The defendants entered appearance and filed their written statement and a counter.

6. The 1st defendant filed a written statement stating the schedule mentioned property is not the property of the 1st defendant. He would state that he was a tenant under one late T.N.Habib Khan, who had initiated R.C.O.P. proceedings against him. The property involved in eviction proceeding, in R.C.O.P.No.1107 of 2007, is not the 1st defendant's property but it belongs to late T.N.Habib Khan.

7. He would further state that he had never handed over possession to the plaintiff and he cannot also handed over possession as he is only a tenant



C.R.P.(NPD)No.3122 of 2022

of the suit schedule mentioned property.

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8. Before the learned Trial Judge, the plaintiff had marked Ex.P1 to Ex.P7. On the side of the respondents, Ex.R1 to Ex.R10 were marked.

9. Neither the plaintiff nor the defendants graced the witness box to depose on their respective cases. The injunction application was disposed of on the basis of affidavits alone.

10. The learned Trial Judge passed the following order :

“Considering above facts and circumstances of this petition. Admittedly the petitioner has been marked sufficient documents to prove their side. Rival submission of both sides, the petitioner's side is proved. At this stage, the real fact could not be find. During the time of trial, the real fact will come out. Hence prima facie and balance of convenience in favour of the petitioner herein. Hence this petition is allowed.”

11. A perusal of this order shows that it is a non-speaking, cryptic and laconic. The learned Trial Judge does not give any reasons for the purpose of coming to the conclusion that there is a *prima facie* case or balance of convenience in favour of the plaintiff. In fact, the specific case of the parties



C.R.P.(NPD)No.3122 of 2022

is that on one hand the plaintiff pleads that he is a tenant under the 1st defendant and the 1st defendant had denied the existence of the relationship of landlord and tenant. Therefore, the duty laid upon the learned Trial Judge to come to a clear and categorical conclusion whether that the plaintiff is the tenant under the 1st defendant or under defendant Nos.2 to 4.

12. The order extracted above shows that nothing of that sort had even been discussed by the learned Judge. Unless and until, a *prima facie* case is established, the question of the learned Judge going into the balance of convenience does not arise. If there is no *prima facie* case, the bucks stop there. The application should have been dismissed.

13. The finding of the learned Judge that the petitioner has marked sufficient documents to prove their side neither appeals to me in English nor in law. The plaintiff's documents do not point out to any existence of relationship of landlord and tenant.

14. On the contrary, as rightly pointed out by Mr.V.G.Suresh Kumar, the First Information Report that had been filed before the Court had been



C.R.P.(NPD)No.3122 of 2022

tampered with by the plaintiff. A person who comes to Court with a tampered record is not entitled to any relief, let alone the highly equitable relief of injunction.

15. Be that as it may, aggrieved by this order, an appeal was preferred before the Additional Judge in C.M.A.No.9 of 2020. The learned Appellate Judge took up the appeal for hearing. The learned Judge records in Paragraph No.19 of the order that two lease agreements had been entered into between the plaintiff and the 1st defendant. She has specifically given a finding that those documents had not been filed before the Court. However, he would come to the conclusion that the appellants had admitted to the possession of the plaintiff.

16. While going through the counter filed by defendant Nos.2 to 4, I do not find any such admission. Here too, the learned Judge has not discussed that the plaintiff is not in possession of property and in what manner and character he is in possession. The learned Appellate Judge has come to the conclusion only on the basis of the alleged admission of the



C.R.P.(NPD)No.3122 of 2022

defendants.

WEB COPY

17. As stated above, the 1st defendant, under whom the plaintiff claims, has filed a counter that he has "**not**" handed over possession to the plaintiff. Therefore, to construed that statement as an admission is but a perversity. I am aware of the limitations of Article 227 of the Constitution of India. I cannot interfere with an order, unless and until, the same is perverse or illegal. To ignore the relevant facts and to take into consideration irrelevant facts is hall mark of perversity.

18. The Courts below prior to grant of injunction are duty bound to discuss whether there is a *prima facie* case and thereafter, discuss the balance of convenience. A reading of Paragraph Nos.19 and 20 of the lower Appellate Court does not show any such discussion.

19. In the light of the above discussion, I have no other option than to allow the revision. Therefore, the order passed in C.M.A.No.9 of 2020 dated 03.08.2022 in confirming the order and decreetal order of the learned Trial Judge in I.A.No.1 of 2019 in O.S.No.995 of 2019 dated 09.03.2020 are set



C.R.P.(NPD)No.3122 of 2022

aside.

WEB COPY

20. Accordingly, the Civil Revision Petition stands allowed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

25.04.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.

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To

1.The learned VII Additional Judge,

Page No 8 of 9

<https://www.mhc.tn.gov.in/judis>



C.R.P.(NPD)No.3122 of 2022

City Civil Court at Chennai

2. The learned XI Assistant City Civil Judge,
Chennai

C.R.P.(NPD)No.3122 of 2022
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25.04.2024