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C.R.P. (PD) .No. 3775 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.09.2024

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THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P. (PD) .No. 3775 of 2024

&

C.M.P.No. 20655 of 2024

1.V.Nagarajan

2.T.Murugan

...Petitioners

Vs.

1.I.Shajitha Parveen

2.The Sub-Divisional Magistrate-cum-
Revenue Divisional Officer,
Cuddalore.

...Respondents

Prayer: Petition is filed under Article 227 of the Constitution of India against the order dated 25.03.2024 passed in I.A.No.25 of 2024 in O.S.No.14 of 2024, on the file of the Additional District Munsif,



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For Petitioner : Ms. J.Pooja
for Mr. D.Baskar

For Respondent 2: Mr. A.Siddharth
Government Advocate.

ORDER

Heard Ms.J.Pooja for Mr.D.Baskar for the civil revision petitioners and Mr.R.Siddharth, Government Advocate for the 2nd respondent.

2. This Civil Revision Petition arises against the order of the Additional District Munsif, Cuddalore, in I.A.No.25 of 2024 in O.S.No.14 of 2024 dated 25.03.2024. O.S.No.14 of 2024 is a suit to declare that the proceedings initiated by the Sub Divisional Magistrate cum Revenue Divisional Officer in M.C.No.14 of 2024 dated 13.01.2024 is arbitrary, malicious, without jurisdiction and for the



relief of permanent injunction restraining defendants 1 and 2 not to interfere with peaceful possession and enjoyment of the property of the plaintiff except in accordance with law.

3. The undisputed facts are the 1st defendant is the owner of the property. She put the 1st plaintiff in possession of the property on 01.05.1997 and the 2nd plaintiff on 05.12.2006. The 1st defendant pleaded before the 2nd defendant that the building in which the plaintiffs are residing is in a dilapidated condition and requires immediate demolition.

4. The 1st plaintiff says that he is a tenant for the past 27 years and the 2nd plaintiff pleads that he is a tenant for 18 years. They plead that the 1st defendant with an intention to cheat the plaintiffs and defraud them by retaining the advance paid by them has initiated proceedings in M.C.No.14 of 2024. It is the case of the plaintiffs that the 2nd defendant has no jurisdiction to entertain the proceedings and



therefore, the suit.

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5. Pending disposal of the suit, they took out an application in I.A.No.25 of 2024, seeking for ad interim stay of all further proceedings on the file of the 2nd defendant.

6. After receipt of the counter from the 1st respondent, the learned Judge went on to dismiss the application. Hence, the revision.

7. Ms.J.Pooja submits that the learned District Munsif had erred in holding that the jurisdiction of the Court is barred under Section 133 (2) of the Criminal Procedure Code. According to her, no orders have been passed by the 2nd defendant and Section 133 (2) applies only if an order is passed. She states even before the order is passed she has approached the Civil Court. Therefore, she pleads that the suit is maintainable.



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8. In order to substantiate this plea, she relies upon the Judgements of the Supreme Court in ***Ganga Bai Vs. Vijay Kumar*** - AIR 1974 SC 1126 with particular reference to paragraph No.15 and upon ***Ishar Singh Vs. National Fertilizers and another*** - AIR 1991 SC 1546 with particular reference to paragraph No.5.

9. Ms.Pooja argues when the Rent Controller is an appropriate person to order eviction, the Executive Magistrate does not possess the jurisdiction to deal with the issue.

10. These arguments have been stoutly refused by Mr.Siddharth. He pleads that the 2nd defendant has jurisdiction to deal with the issue and that the appropriate remedy for the parties is not before the Civil Court but to wait till the 2nd defendant decides on the issues raised and thereafter, approach the revisional Court.



11. I have carefully considered the arguments of Ms.Pooja and Mr.Siddharth.

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12. It is the plea of the 1st defendant that the building, which is the subject matter of dispute is in an extremely dilapidated condition. Jurisdiction, as understood in law, is a legal cloak empowering an authority to decide the issues which are before him. I have to see whether under Section 133 of Criminal Procedure Code, the Executive Magistrate possesses the jurisdiction to deal with buildings which are alleged to be in dilapidated condition.

13. If the statute confers jurisdiction then the authority is certainly entitled to entertain the petition. Lack of jurisdiction must be differentiated from erroneous exercise of jurisdiction. If an authority does not possess jurisdiction at all, then the Court will certainly have jurisdiction to restrain such authority from proceeding further. If the authority has jurisdiction to pass an order and exercises



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the power wrongly or erroneously, the remedy for the party is only to challenge the said order in a manner provided under the Act which confers jurisdiction. In case finality is attached to such an order, then the doors of this Court are always open to the aggrieved person to proceed under Article 226 of Constitution of India or Section 482 of Cr.P.C. This is because no party can be left remediless.

14. Insofar as the facts of this case is concerned, the specific plea of the 1st respondent is that the building is in a dilapidated condition. A reading of Section 133 of the Code of Criminal Procedure shows that District Magistrate or Sub Divisional Magistrate or Executive Magistrate is empowered by the Code, on receipt of information from a Police Officer or any other information, and after taking evidence as he thinks fit, to direct repair, removal or support of building or structure, which is likely to fall and cause injury to any person living or carrying on business in the neighborhood or any person passing by.



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15. It is the plea of the 1st defendant that the building would collapse at any moment. It is not in dispute that the plaintiffs are carrying on business in the said building. Whether the building is in the dilapidated state as alleged by the 1st respondent or is sound as alleged by the petitioners is a matter, which requires evidence, which I am certain the 2nd respondent would entertain.

16. At the very outset, it cannot be said that the 2nd respondent is totally denuded of the power to entertain the petition filed by the 1st respondent. As discussed above, if the 2nd respondent possesses jurisdiction to decide the matter, it is entirely within his jurisdiction to decide the matter as he deems fit. In case he decides erroneously, the petitioners always have the remedy as pointed above.

17. If I were to accept the plea of Ms.Pooja, then I have to concede the power of Writ of Prohibition to the learned District



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Munsif. I do not possess such powers to confer jurisdiction on the District Munsif, neither does the Constitution contemplate such a delegation of powers. The learned District Munsif though has observed that the suit is not maintainable but she has not rejected the plaint. The plaint continues to be on the file of the learned District Munsif. Therefore, the apprehension of Ms.Pooja is unfounded. The learned District Munsif had only rendered a finding in order to dispose of the interlocutory application that was pending before her. The finding given in interlocutory application will not operate as a bar at the time of final disposal. All that happened in the case is that the stay application filed by the plaintiff has been dismissed. The learned Judge has also made it clear that the finding rendered by her in the interlocutory application will not prejudice the merits of the case.

18. In the light of the above discussion, I do not find any reason to interfere with the order of the Trial Judge. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous



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petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The Additional District Munsif,
Cuddalore.



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V.LAKSHMINARAYANAN, J.

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