



C.R.P. No. 3970 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 3970 of 2024
and
C.M.P. No. 21754 of 2024

1. Mohamed Raffik

2. Parisa Beevi

... Petitioners / Appellants /
Respondents / Defendants

Vs.

Aboobacker

... Respondent / Respondent /
Petitioner / Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 20.06.2024 passed by the learned Principal Sub Judge, Puducherry in C.M.A. No. 1 of 2024 confirming the order dated 24.11.2023 passed by the learned I Additional District Munsif, Puducherry in I.A. No. 803 of 2023 in O.S. No. 1290 of 2023.

For Petitioner : Mr. R.Thiagarajan

ORDER



C.R.P. No. 3970 of 2024

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This civil revision petition arises against the order passed by the learned Principal Subordinate Judge, Puducherry in C.M.A. No. 1 of 2024 dated 20.06.2024 in confirming the order and decretal order of the learned I Additional District Munsif, Puducherry in I.A. No. 803 of 2023 in O.S. No. 1290 of 2023 dated 24.11.2023.

2. O.S. No. 1290 of 2023 is a suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff and for a direction to repair and stop the flow of sewage water from the first floor of the building into the suit schedule mentioned property and for a direction to restore the electricity and water supply to the shop of the plaintiff.

3. The plaintiff is the son of the 2nd defendant and the brother of the 1st defendant. The 2nd defendant had purchased the property in the year 1997. Of her two sons, the plaintiff was running a juice shop under the name and style of Aboobacker Juice Shop in the suit schedule mentioned property. He would allege that on account of the fact that the 2nd defendant had sold the property to the 1st defendant's wife, the 1st defendant started giving him pinpricks in running the business. He would plead that the 1st defendant had diverted the



C.R.P. No. 3970 of 2024

sewage from the first floor to his shop premises and had also disconnected the electricity and water supply to the said premises. Hence, the suit.

4. Pending the suit, he sought for an Interlocutory Application in I.A. No. 803 of 2023 seeking for an injunction restraining the defendants not to interfere with his possession. The learned Judge issued notice in the said application and received a counter from the defendants. The defendants admitted that the petitioner is running a juice shop but would plead that as the actual owner is Fathima, the wife of the 1st petitioner and the daughter-in-law of the 2nd petitioner, and she not having been impleaded as a party to the suit, the application is not maintainable.

5. The learned Trial Judge, after consideration of arguments on both sides, came to a conclusion that since the respondent / plaintiff is in possession and enjoyment of the same, he has made out a *prima facie* case and is entitled for an order of injunction.

6. Aggrieved by the same, the defendants preferred an appeal before the learned Principal Subordinate Judge at Puducherry. The learned Principal



C.R.P. No. 3970 of 2024

Subordinate Judge received the appeal as C.M.A. No. 1 of 2024. After hearing both sides, she dismissed the appeal on 20.06.2024. Hence, the revision.

7. Heard Mr. R.Thiagarajan for the civil revision petitioners.

8. Mr. R.Thiagarajan submits that there is a dispute in the identity of the property and further that as the original owner Fathima has not been impleaded as a party to the suit, the learned Trial Judge as well as the Appellate Court erred in granting an order of injunction.

9. I have carefully considered the submissions of Mr. R.Thiagarajan.

10. For the purpose of deciding a *prima facie* case, the plaintiff will have to prove that he is in possession of the property and that he is suffering disturbance at the hands of the defendants. The fact that the plaintiff is in possession of the property has been admitted by the defendants themselves in their counter. Insofar as the disturbance that has been caused to the plaintiff is concerned, both the Courts below have recorded the fact that the parties have gone before the Jamaat, the police as well as Her Excellency the Lieutenant Governor of Pondicherry on account of the disputes that has arisen between



C.R.P. No. 3970 of 2024

them.

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11. The position of law in this country is that a person in settled possession of the property can continue to be so, unless and until he is evicted by due process of law.

12. The defendants having admitted to the possession of the plaintiff, the capacity in which the plaintiff is in possession does not matter since he seems to be in possession of the property from 1997 onwards. The remedy for the defendants is to initiate proceedings for eviction and not attempt to throw him out of the property in a dishonourable manner.

13. Furthermore, when both the Courts below have concurrently found that the plaintiff is in possession and has suffered disturbance at the hands of the defendants and have granted an order of injunction, unless and until perversity is writ large in the order, the scope of interference under 227 is limited. In the light of the above, I do not find any reasons to interfere.

14. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.



C.R.P. No. 3970 of 2024

WEB COPY

30.09.2024

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No
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To

1. Principal Sub Judge, Puducherry.
2. I Additional District Munsif, Puducherry.



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C.R.P. No. 3970 of 2024

V.LAKSHMINARAYANAN, J.,

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C.R.P. No. 3970 of 2024

30.09.2024