



C.R.P. (PD) .No. 4240 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.10.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 4240 of 2024

James Rosario

...Petitioner

Vs.

Ruban

...Respondent

Prayer: Petition is filed under Article 227 of the Constitution of India to set aside the docket order in R.E.P.Sr.No.1954 of 2024 in unnumbered O.S. / 2024 on the file of the District Munsif Court at Sriperumbadur.

For Petitioner : Mr. R.Rajarajan



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ORDER

This petition arises against the order passed by the learned District Munsif, Sriperumbudur in Rep.Sr.No.1954 of 2024 in unnumbered O.S.No. / 2024 dated 31.07.2024.

2. The civil revision petitioner is the plaintiff in the suit. He pleads that the property belonged to his father, one George. The said George is said to have executed a settlement deed in favour of the defendant pursuant to an oral family arrangement. According to the plaintiff, he is in possession and enjoyment of the property. Though he claims for equal rights, his prayer is confined to not being evicted, except otherwise in accordance with law. The learned District Munsif, Sriperumbudur, refused to number the plaint and returned it as not maintainable on the ground that there cannot be an injunction against the true owner. Hence, this revision.

3. I heard Mr. R.Rajarajan for the civil revision petitioner.



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4. The Court, at the time of numbering of a plaint, need not take the role of the defendant. At the stage, all that the Court is concerned is with the averments made in the plaint, Court fee paid, etc,. It is a ministerial act of numbering the plaint. At that stage, the Court cannot conduct a mini trial and decide *whether the plaintiff is the owner or the defendant is the owner*.

5. It is the specific plea of the plaintiff that his father George had delivered the property in favour of the defendant on account of an oral family arrangement. *Whether the oral family arrangement is true or not* can only be gone through at the time of trial.

6. In any event, the plaintiff seeks for a decree that he should not be evicted except otherwise in accordance with law. At the threshold, the plaintiff need not give any evidence to show that he is in possession of the property. The position of law has been clearly laid down in ***Selvaraj Vs. Koodankulam Nuclear Power Plant India Limited –***



(2021) 5 MLJ 467.

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7. The finding of the learned Trial Judge that there cannot be an injunction against the true owner should be a finding after full Trial. In any event, the law of this Country does not enable a person who is the true owner to dispossess a person who is in settled possession, except in accordance with law.

8. In the light of the above discussion, the Civil Revision Petition is allowed. The return dated 31.07.2024 is set aside. The learned District Munsif, Sriperumbudur, is directed to number the suit, if it is otherwise in order. No costs.

22.10.2024

Index : Yes/No
Internet : Yes/No
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Note: The Registry is directed to return the original plaint to the learned counsel for the petitioner after getting usual endorsement.

To

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The District Munsif,
Sriperumbudur.



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V.LAKSHMINARAYANAN, J.



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