



C.R.P.(MD)No.1804 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1804 of 2024

and

C.M.P.(MD)No.10207 of 2024

M.Balraj

... Petitioner/Petitioner/Plaintiff

Vs.

S.Murugan

... Respondent/Respondent/3rd Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and executable order dated 18.07.2024 passed in the application in I.A. No.11 of 2024 in O.S. No.39 of 2024 on the file of the Subordinate Court, Sattur and allow the same.

For Petitioner : Mr.J.Barathan

For Respondent : Mr.R.Rajamohan

* * *



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ORDER

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The only question that calls for consideration in this civil revision petition is whether the eviction of a tenant can be obtained through mandatory injunction.

2.The plaintiff in O.S No.39 of 2024 on the file of the Sub Court, Sattur is the revision petitioner herein. The revision petitioner was a tenant under first defendant. The first defendant sold the suit property in favour of the second defendant vide five sale deeds dated 20.01.2022. The second defendant thereafter sold the suit property in favour of the third defendant vide sale deed dated 21.03.2022. The plaintiff sought declaration that all these sale transactions are null and void. He also sought permanent injunction to restrain the third defendant from interfering with his possession and enjoyment of the suit property. He primarily contended that he has the right of preemption to purchase the suit property from the first defendant under a separate agreement. In the said suit, the third defendant filed counter claim seeking mandatory injunction to evict the plaintiff from the suit property after removing the temporary structure put up by the plaintiff. The plaintiff filed I.A.No.11 of 2024 for rejection of the counter claim. It was dismissed by the Court below



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vide order dated 18.07.2024. Questioning the same, the present civil revision petition has been filed.

3.The learned counsel for the respondent submitted that the impugned order is well reasoned and that it does not call for interference. He relied on the decision reported in **2023 LiveLaw (SC) 517 (Sajjan Singh v. Jasvir Kaur)** in support of his contention. He called upon this Court to dismiss the civil revision petition.

4.I carefully considered the rival contentions and went through the materials on record. In the decision reported in **2023 LiveLaw (SC) 517**, it has been observed that a plaint cannot be rejected on the ground that appropriate prayer was not sought. It was further held that this is a matter ultimately to be decided in the suit and not an issue to be considered while deciding the application under Order VII Rule 11 of Civil Procedure Code.

5.The aforesaid decision was directed against the order of the Hon'ble Punjab and Haryana High Court in Civil Revision No.16474 of 2018 (Jasvir Karu Vs. Sajjan Singh and Others). The plaintiff in that said suit had sought declaration that certain sale deeds were null and void. The defendant filed an



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application for rejection of the plaint on the ground that proper court fee was not paid. The Hon'ble Punjab and Haryana High Court held that when sale deeds have been assailed on the ground of fraud, the plaintiff ought to have paid court fee on the market value of the property. It is obvious that this was not correct. The plaintiff could have been called upon to pay court fee on the market value of the property only if he was a party to the document. In this case, it was not so. Therefore, valuation done by the plaintiff was right. This order of the High Court was reversed by the Hon'ble Supreme Court. The case on hand does not give rise to any similar issue. Therefore, the aforesaid decision relied on by the learned counsel for the respondent is not applicable to the facts and circumstances of this case.

6. In ***K.K. Verma vs. UOI (AIR 1954 Bombay 358)***, Chagla, C.J presiding over a Division Bench held that in India, a landlord can eject his erstwhile tenant only by obtaining a decree for ejectment. This decision was approvingly cited by the Hon'ble Supreme Court in ***Sant Lal Jain v. Avatar Singh (1985) 2 SCC 332***. A suit for mandatory injunction will lie against a licensee or a trespasser who is not in settled possession. A suit for mandatory injunction will not lie to evict a tenant.



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7. There is another reason for holding that a suit for mandatory injunction will not lie against tenant. Otherwise, with a view to evade court fees, the landlords will value the suits under Section 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and pay fixed court fees. The plaintiff cannot by sheer manipulation value the suit under Section 27(c) of the Act and seek recovery of possession of the property. When the prayer in the suit is one for possession, the claim will have to be valued under Section 30 of the Act by paying court fee on the market value [vide **CRP PD No.2983 of 2021 dated 04.01.2022 (Senthamarai Kannan vs. C.Manavalan)**]. It is the duty of court to see that the requisite court fees are paid [**Lakhiram Ramdas v. Vidyut Cable & Rubber Industries (1963 SCC OnLine Bom 22)**].

8. Since a tenant can be evicted only by filing an ejectment suit under Section 106 of the Transfer of Property Act, 1882 and cannot be thrown out by mandatory injunction, the counter claim was clearly not maintainable. The Court below erred in dismissing I.A.No.11 of 2024 filed for rejecting the counter claim. In this view of the matter, the impugned order is set aside and the civil revision petition is allowed. The respondent is at liberty to seek the relief of ejectment against the revision petitioner / tenant by valuing his claim under Section 30 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.



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The relief of mandatory injunction can be sought only as ancillary relief. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The Sub Judge, Sattur.



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G.R.SWAMINATHAN, J.

ias/Skm

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