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C.R.P.(MD)No.2935 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P(MD)No.2935 of 2023

and

CMP(MD)No.15141 of 2023

Nachiappan : Petitioner/Petitioner/
Defendant

Vs.

Rengasamy : Respondent/Respondent/
Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in IA No.330 of 2022 in OS No.159 of 2021 on the file of the District Munsif Court, Thiruvaiyaru, dated 18/08/2023 and pass such further or other orders.

For Petitioner : Mr.A.Saravanan

For Respondent : Mr.A.George Stephen
Kanikkai Raj

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated passed in IA No.330 of 2022 in OS No.159 of 2021 by the District Munsif, Thiruvaiyaru.



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2. The facts in brief:-

Suit in OS No.159 of 2021 was filed by the respondent herein setting out the following facts:-

The suit property originally belonged to Grama Samuthaya Mirasudhars. The plaintiff is the cultivating tenant in the property. But the defendant encroached the same, on 16/09/2020 and trying to put up a construction against the terms of the lease. On 21/12/2021, the defendant started laying foundation. That was prevented by him. Since threat continues, he filed the suit.

3. According to him, he was the original cultivating tenant in respect of the property. A portion of the property was leased out by him in favour of his sister's daughter. In that property also, the defendant tried to encroach. So. the suit in OS No.95 of 2021 against the defendant. It is also stated to be pending. The defendant created a fake document as if the plaintiff sub-leased the property. So, he filed a petition before the before the Record of Tenancy Right Tahsildar, Papanasam. An order was also passed, on 16/09/2020 in the Record of Tenancy Proceedings in Ku.Oo.Pa.No.V/19-2018-A2. Against which, appeal was preferred before the RDO in AP No. 3/2020. Still the appeal is pending. But pending the



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appeal proceedings, now the defendant is trying to construct a building. Since in the punja lands, no construction can be made anyone, on that account, the suit is filed for permanent injunction.

4. Seeking rejection of the plaint, the petitioner took out a petition under Order 7 Rule 11 CPC in IA No.330 of 2022 with the following averments:-

Since the respondent namely the plaintiff is not in the possession of the property, the suit for permanent injunction will not lie. On the basis of the sub-lease created in his favour by the plaintiff, his name is recorded in the Record of Tenancy Right by the competent authority. So, the suit itself is not maintainable, since only the competent authority has to decide the issue between the parties.

5. That was resisted by the respondent by filing the counter.

6. After hearing both sides, the trial court dismissed the petition stating that it is a trivial issue, which got to be decided in the trial.



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7. Against which, this civil revision petition has been preferred.

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8. Heard both sides.

9. The learned counsel appearing for the petitioner would submit that he has been recognized as cultivating tenant in that property by the competent authority. The respondent is not in possession. It is admitted by him that only the petitioner is in possession. So, the question of granting permanent injunction against a person in possession will not lie. More-over, it is also submitted that the civil court cannot decide, who is the cultivating tenant, since it has been already decided by the competent authority.

10. Per contra, the learned counsel appearing for the respondent would submit that against the order passed by the Record of Tenancy Right, appeal is preferred by him. It is also stated to be pending as mentioned in the plaint. Pending appeal proceedings, now the petitioner is trying to put up a construction. So, he got every right to maintain the suit.



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11.The learned counsel appearing for the petitioner would rely upon the Commissioner's report in the suit. He would submit that in the Commissioner report, there is a clear indication to the effect that a basement is put up. Similarly, the Commissioner report was also filed in OS No.95 of 2021, which was filed by the respondent's sister against the petitioner.

12.Now whatever it may be, unless the appeal is decided, the parties cannot challenge the physical features. According to the respondent, only for the limited purpose, he filed the suit.

13.Who is the cultivating tenant is beyond the scope of the issue to be decided by the civil court. There can be no doubt on the proposition, but only limited prayer sought for in the plaint namely till the disposal of the appeal, construction should not be made by the petitioner. If it is made, it will affect his right. Since it is a trivial issue, that can be tried to its logical conclusion.

14.So I find absolutely no ingredients are attracted as set out in Order 7 Rule 11 CPC.



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15.In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

18/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The District Munsif,
Thiruvaiyaru.
Thanjavur District.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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