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C.R.P.Nos.1246 & 1264 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2024
PRONOUNCED ON : .01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.Nos.1246 & 1264 of 2024
and
C.M.P. Nos.6584 & 6671 of 2024

Kamal B Vadhar

... Petitioner / Plaintiff
in both CRPs

Vs.

1.M/s.Jain Mahita Sangh

Represented by its Committee Member,
Mrs.Bharti R.Mehta,
W/o.Mr.Rohit Mehta,
Flat No.1, Hari Ohm Apartments,
No.92/93, Kalathiappa Mudhali Street,
Choolai, Chennai 112.

... 1st Respondent / Defendant
in both CRPs

2.Chandrakant C.Udani,

Trustee Gujarathi Bhojanalaya Basa Trust,
S/o.Sri Chunilal Udani,
B111, Swapnalok Apartment,
No.60, EVK Sampath Road, Vepery,
Chennai-600 007.

... 2nd Respondent / Defendant
in CRP.1246/2024

PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order dated 12th February 2024 passed by the learned III Additional Judge, FAC II Additional Court, City Civil Court, Chennai in I.A.No.2 of 2022 and I.A.No.3 of 2022 respectively in O.S.No.2733 of 2018.



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C.R.P.Nos.1246 & 1264 of 2024

For Petitioner : Mr.R.Subramanian
(in both cases)
For Respondents : Mr.M.Jagadeesan
For Mr.P.B.Ramanujam Associates
(in both cases)

COMMON ORDER

Since the issue involved in both the Civil Revision Petitions is one and the same, they are disposed of by this common order.

2. The plaintiff filed an Interlocutory Application in I.A.No.2/2022 under order 1, Rule 10 CPC, to implead “the Gujarathi Bhojanalaya Basa Trust” as 2nd defendant in O.S.No.2733 of 2018 and I.A.No.3/2022 is filed under Order 12, Rule 6 CPC., decreeing the Suit in O.S.No.2733 of 2018, with heavily taxing the defendant for disturbing the peaceful possession and enjoyment of suit schedule property by the plaintiff. The learned III Additional Judge, FAC II Additional Court, City Civil Court, Chennai, dismissed both the applications on 12.02.2024. Challenging the orders dated 12.02.2024, the petitioner is before this Court with the present Civil Revision Petitions.

3. Mr.R.Subramanian, the learned counsel appearing for the petitioner/plaintiff would submit that in the counter filed by the respondents / defendants it has been stated that the Petitioner / Plaintiff's father was permitted to stay in the schedule mentioned



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property as a licensee, is a misrepresentation. Any misrepresentation to Court is a Fraud and a person committing Fraud is not entitled to claim any relief from the Court. The Petitioner / Plaintiff need not file any petition under Order 12 Rule 6 as the Court itself can act on its own. But, under Order 7, Rule 11, there should be a petition to the Court from the defendant only. According to the Court below, the petitioner / plaintiff should let in evidence to prove admission. Order 12, Rule 6 speaks of any stage in the Suit. The respondents / defendants not even filed one document to contradict the allegations in the plaint, which is another admission.

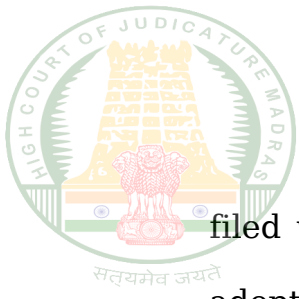
4. The learned counsel further submitted that the person, who granted absolute ownership of the Suit proeprty to the father of the petitioner is one trustee and the trustee, who executed the illegal sale deed is another trustee. The second mentioned person / alleged trustee should have seen and followed the records of the Trust. Such records should be produced to the Court. Therefore, to implead the proposed party viz., "The Gujarathi Bhojanalaya Basa Trust" as 2nd defendant in O.S.No.2733 of 2018 is a necessary party. There is a provision to examine a party by appointing an advocate commissioner when a party cannot be examined in Court at the instance of t he



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party, who says that a witness cannot attend the Court. The impleadment and the necessity are criterion to dispose of the suit effectively. To sustain and maintain the arguments in respect of the right and holding of the suit property by the previous Trust that is Gujarathi Bhojanalaya Trust, the respondent has not produced the Title Deed in favour of the Gujarathi Bhojanataya Trust. The 1st respondent himself admitted that the petitioner is staying in the property prior to their purchasing the suit property. The learned Counsel for the petitioner, in support of his contentions, has relied on the decision of this Court in ***R.Sankaranarayanan Vs. V.Elumalai*** reported in ***2014 (7) MLJ 226***.

5. Mr.M.Jagadeesan, the learned counsel appearing for the respondents / defendants would submit that the petitioner is son of Late Bhupendra T.Vadhar, who was a Manager of the Trust. With the permission of the Trust he was staying in the property by care taking the other property. He was at no point of time assigned to take the suit property. The 1st respondent purchased the suit property bonafidely for valid considerations. The petitioner is playing ducks and drakes with the Court, filing one petition after another, to prejudice the Court from taking the case on merits. The Petitions are



filed with a malice intention to protract the pending proceedings by adopting dilatory tactics. Hence, the learned counsel prays for dismissal of the Civil Revision Petitions.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. On perusal of the records it is seen that the petitioner / plaintiff filed the Suit in O.S.No.2733 of 2018 on the file of learned III Additional Judge, FAC II Additional Court, City Civil Court, Chennai, for a permanent injunction restraining the defendants from in any manner interfering with the peaceful possession and enjoyment of the suit schedule property and to declare the Sale Deed, dated 20.07.2017 as null and void. Pending Suit, the petitioner / plaintiff filed an Interlocutory Application in I.A.No.2/2022 under order 1, Rule 10 CPC, to implead "The Gujarathi Bhojanalaya Basa Trust", as 2nd defendant and filed I.A.No.3/2022 under Order 12, Rule 6 CPC., decreeing the Suit in O.S.No.2733 of 2018, not to disturb the peaceful possession and enjoyment of the Suit Schedule property by the plaintiff. The learned III Additional Judge, FAC II Additional Court, City Civil Court, Chennai, dismissed both the applications on



12.02.2024. Challenging the orders dated 12.02.2024, the petitioner is before this Court with the present Revisions.

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8. It is seen from the records that the Suit property is situated at Flat No.2, Hari Ohm Apartments, Old Door Nos.72, 73, 74, 75A, New Door Nos.92&93, Kalathiappa Mudhali Street, Choolai, Chennai – 112. According to the petitioner, the petitioner's father viz., Bhupendra T.Vadhar was employed as a Manager in the said Trust from the year 1978. The then Trustee inducted the petitioner's father in possession of the property, as a care taker for the remaining two flats by collecting rent and maintaining them. Petitioner's father died on 19.03.2011. Latter, the suit property was sold to the respondent 'Jain Mahila Sangh'. The respondents now attempting to interfere with the petitioner's peaceful possession of the property. The petitioner has acquired title by adverse possession. Even as per the pleadings of the petitioner/plaintiff, the respondents / defendants are the title holder. The proposed party did not claim any right, title or possession over the suit property and not interfered with the petitioner's enjoyment of the property. It is a well established principle that the plaintiff must win or fall on his own pleadings and evidence. To succeed in the case, the plaintiff must adduce evidence



C.R.P.Nos.1246 & 1264 of 2024

and prove his case of adverse possession more than the statutory period. Mere possession is not enough to get a decree for permanent injunction. But, in this case, there is absolutely no evidence adduced by the plaintiff. The trial Court has rightly found that the petitioner/plaintiff has not proved his case and I do not find any reason to interfere with the findings given by the trial Court.

9. In view of the forgoing reasons, the Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

09.01.2025

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes
vv2 / mpk
To

The III Additional Judge,
FAC II Additional Court,
City Civil Court,
Chennai



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C.R.P.Nos.1246 & 1264 of 2024

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER
IN
C.R.P.Nos.1246 & 1264 of 2024

09.01.2025