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CRP.PD.No.5237 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.PD.No.5237 of 2024

and

C.M.P.No.29251 of 2024

R.M.Subramaniam

... Petitioner

Vs

K.Krishnakumar

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the Order dated 12.04.2024 made in I.A.No.1 of 2023 in O.S.No.200 of 2017, on the file of the District Munsif Court at Sriperumbudur.

For Petitioner : Mr.V.Anthony Elangovan Raj

ORDER

This Civil Revision Petition is filed challenging the order passed



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by the learned District Munsif Court at Sriperumbudur in I.A.No.1 of 2023 in O.S.No.200 of 2017, dated 12.04.2024.

2. The Civil Revision Petitioner is the plaintiff in O.S.No.200 of 2017. The suit seeks permanent injunction to restrain the sole defendant from interfering with the peaceful possession and enjoyment of the plaintiff's over the suit schedule mentioned property.

3. The claim of the plaintiff is that he entered into an agreement of sale on 14.03.2008, with one, Vasudevan, who was the previous owner. On the date of the agreement, the plaintiff claimed he paid a sum of Rs.3,00,000/- to Mr.Vasudevan. Thereafter, on 01.12.2008, he paid a balance of Rs.3,00,000/-. On that date, the said Vasudevan had executed a General Power of Attorney in favour of the plaintiff. As the defendant attempted to interfere with the peaceful possession and enjoyment of the property, he brought over this suit.



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4. Summons were served to the defendant. He filed a detailed written statement. According to him, Vasudevan had mortgaged the two schedule mentioned properties in favour of M/s.HSBC Bank. Since he defaulted on the repayment, M/s.HSBC Bank invoked the provisions of SARFAESI Act. Pursuant thereto, the property was sold by M/s.HSBC Bank to the defendant. A sale deed was also executed in Doc.No.4244 of 2006 on 12.07.2006. The defendant also pleaded that on the very day, the Bank also handed over the possession of the property to the defendant. Hence, he pleaded that the suit is not maintainable. He also pointed out earlier Vasudevan had filed a suit in O.S.No.1033 of 2008 and the said suit was dismissed on 20.04.2009. On these pleadings the parties went to trial.

5. The plaintiff examined two witnesses. Subsequently, he desired to summon the Village Administrative Officer of



Manimangalam Village to depose in the suit. Hence, he filed I.A.No.1 of 2023. This application was resisted by the defendant pleading that there is no necessity for the Village Administrative Officer to be depose on behalf of the plaintiff about the possession of the property. He also pointed out that the petition had been presented only for the purpose of dragging on the proceedings.

6. The learned Trial Judge agreed with the defendant and dismissed the suit. Hence this revision.

7. I heard Mr.V.Anthony Elangovan Raj for the Civil Revision Petitioner.

8. Mr.Anthony, pleaded that the examination of the Village Administrative Officer is essential as he would speak about the alleged handing over of possession by M/s.HSBC Bank to the defendant.



9. He says under the SARFAESI Act, handing over of possession can only be through process of Court or through the officers of the Revenue Authorities. He alleges both these procedures had not been adopted in the present case. It is for this purpose, he has filed an application.

10. I have carefully considered the submissions of Mr.V.Anthony Elangovan Raj.

11. I have gone through the records.

12. Here is a suit for permanent injunction. It is the duty of the plaintiff to prove that he is in possession of the property on the date of presentation of the plaint. If the defendant pleads that he is in possession of the property, then it is his lookout to substantiate the said plea before Court. For the purpose of proving possession by the plaintiff, there is no necessity to examine the Village Administrative



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Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

ssn

To

The District Munsif Court,
Sriperumbudur.

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V.LAKSHMINARAYANAN, J.,

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