



C.R.P.(PD)(MD).No.2440 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD).No.2440 of 2023
and CMP(MD).No.12681 of 2023

S.Selvam

....Petitioner

-VS-

Raj Mohan

...Respondent

PRAYER: The Civil Revision Petition has been filed under Section 115 of C.P.C., to call for the records relating to the impugned fair and decreetal order dated 07.08.2023 passed by the Principal District Munsif Kumbakonam in I.A.No.121 of 2022 in O.S.No.387 of 2021 and set aside the same by allowing this Civil Revision Petition.

For Petitioner : Mr.R.S.Sivaram

For Respondent : Mr.M.R.S.Prabhu

ORDER

The defendant in O.S.No.387 of 2021 on the file of the Principal District Musnif Court, Kumbakonam has filed the present civil revision



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petition challenging dismissal of his application order under Order VII Rule 11 of C.P.C.

2.A perusal of the records reveal that the respondent herein had filed the above suit seeking permanent injunction not to disturb his possession. Along with the suit, the plaintiff had relied upon a settlement deed dated 09.01.2020. The said document has been entered into relying upon Adangal and Chitta standing in the name of the mother of the plaintiff. Based upon these documents, the mother of the plaintiff has executed a settlement deed in favour of the plaintiff.

3.According to the defendant/revision petitioner, the plaintiff has obtained separate patta in Patta No.613. Challenging the same, the defendant has preferred an appeal before the Revenue Divisional Officer, Kumbakonam. When the appeal was pending, the plaintiff has presented O.S.No.387 of 2021. Citing the pendency of the civil suit, the Revenue Divisional Officer, Kumbakonam had rejected the appeal with liberty to the defendant to re-open the said issue depending upon the order of the civil Court. Therefore, it is the apprehension of the revision petitioner that the civil Court may be carried away by the patta standing in the name of the revision petitioner and likely to decree the suit.



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4.The learned counsel for the revision petitioner has also pointed out Paragraph No.5(5) of the trial Court wherein the trial Court has given a finding that so far patta as well as the settlement deed have not been cancelled. Relying upon the observations made by the trial Court, the learned counsel for the petitioner contends that the petitioner has managed to get patta in his name and he has also managed to stop the appeal filed by the revision petitioner before the Revenue Divisional Officer, Kumbakonam citing pendency of the suit.

5.According to the petitioner/defendant, the cause of action alleged in the civil suit is imaginary in nature and therefore, the plaint is liable to be rejected. According to him, no such incident as pointed out in the cause of action paragraph as taken place. Though the defendant is in possession of the property, the plaintiff had managed to obtain patta and stall the appeal proceedings before the revenue authority.

6.Per contra, the learned counsel for the respondent/plaintiff had contended that the revision petitioner has not made out any grounds to reject the plaint under Order 7 Rule 11 C.P.C. He further contended that based upon the chitta and adangal alone, the settlement deed has been executed by his mother in his name. The patta has so far not been enclosed



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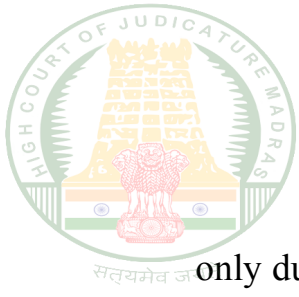
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as one of the plaint documents. He further contended that whether cause of action as alleged in the plaint is imaginary or real can be found out only during the trial. Hence, he prayed for dismissal of the revision petition.

7.I have considered the submissions made on either side and perused the material records.

8.The primary grounds on which the present revision petition has been filed is that certain observations have been made by the trial Court with regard to the fact that the settlement deed and patta standing in the name of the plaintiff have not yet been cancelled. The other grounds raised by the learned counsel for revision petitioner is that the cause of action alleged in the plaint is imaginary in nature and therefore, the plaint has to be rejected.

9.As far as the cause of action is concerned, the plaintiff in Paragraph No.5 has contended that the cause of action in the suit has arisen on 09.01.2020, when the settlement deed was executed in his favour, on 07.11.2021 and on 05.12.2021, when the defendant made an attempt to trespass into the suit schedule property. Whether the plaintiff really is in possession of the property and whether the defendant had made an attempt to trespass into the suit schedule property, have to be decided



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only during the trial and therefore, whether cause of action is imaginary or not cannot be decided under Order-7 Rule 11 C.P.C.

10.As far as the apprehension of the revision petitioner with regard to the patta granted in favour of the plaintiff is concerned, the civil Court has to decide whether he is in possession of the property on the date of filing of the suit or not. The Court should also take into consideration the order passed by RDO, Kumbakonam wherein the appeal was rejected on the sole ground citing pendency of the civil suit.

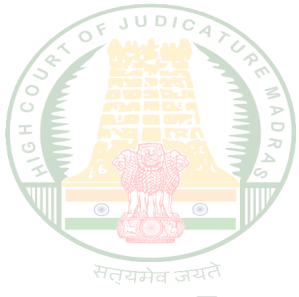
11.This Court is of the considered opinion that it is settled position of law that the entire burden is upon the plaintiff to establish that he is in possession of the suit schedule property on the date of filing of the suit. The burden cannot be shifted to the defendant.

12.In view of the above said deliberations, there are no merits in the revision petition and this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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

- 1.The Principal District Munsif, Kumbakonam.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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