

Alexander Vs. M. Balu,

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Court : Chennai

Decided On : Nov-01-2007

Reported in : 2008(1)CTC225; (2008)2MLJ139

Judge : P. Jyothimani, J.

Acts : Code of Civil Procedure (CPC) - Sections 115 - Order 39, Rule 1 and 2 - Order 43; Code of Civil Procedure (CPC) (Amendment) Act, 1999; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Civil Revision Petition (PD) No. 3293 of 2007 and M.P. Nos. 1 and 2 of 2007

Appellant : Alexander

Respondent : M. Balu, ;m. Ekambaram and Mrs. Banu Mithra

Advocate for Def. : M. Vijayakumar, Adv. for R. 1 and R. 2

Advocate for Pet/Ap. : R. Thiagarajan, Adv. for ;P. Amalanathan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P. Jyothimani, J.

1. The 2nd defendant in the suit is the revision petitioner.
2. The above civil revision petition is directed against the order of the learned District Munsif, Alandur passed in I.A.No.980 of 2007 in O.S.No.237 of 2007, filed by the plaintiffs under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure for an order of ad-interim injunction restraining the defendants, including the petitioner herein from interfering with the peaceful possession and enjoyment of the schedule mentioned property.
3. The suit filed by the plaintiffs is one for permanent injunction in respect of the house and ground in premises No.5, Thiruvalluvar Street, Meenambakkam Village, Saidapet Taluk, Chingalpat District, admeasuring 4375 sq.ft. and thereabouts comprised in Natham Old Survey No.29/2. The above suit is filed by respondents 1 and 2 on the basis that they are in peaceful possession and enjoyment of the properties for the past 42 years as owners and therefore they should be deemed to be the owners to the knowledge of every one in the locality. It is also in the pleadings that they have filed the ration card, gas connection card, electricity card, property tax receipts, water tax receipts, voters list, voters identity card, school certificates, post cards etc. to show that they have been in possession of the property for 42 years. The case of the plaintiffs is that the defendants in the suit, who are the petitioner and third respondent respectively in the revision are attempting to interfere with the peaceful possession and enjoyment of their property.
4. On the other hand, it is the case of the revision petitioner, who is the second defendant in the suit that the third respondent herein, viz., Mrs.Banu Mithra, who is the first defendant in the suit is the owner of the suit property by virtue of a registered settlement dated 11.11.1995, executed by her mother in her favour. The plaintiffs have chosen to give wrong door number and attempting to interfere and trespass into the property of the first defendant. The revision petitioner, who was the second defendant is a promoter of the property by virtue of an agreement between him and the third respondent and has been in possession of an extent of 540 sq.ft. and put up a building therein. In fact, the third respondent has filed a suit in O.S.No.365 of 2005 against respondents 1 and 2 for mandatory injunction to

remove the unauthorised construction put up by the first respondent herein, who was the first plaintiff. Even though the said suit was dismissed, the third respondent is taking steps to file an application to restore the same.

5. Pending the present suit, viz., O.S.No.237 of 2007, the first and second respondents have filed I.A.No.980 of 2007 for ad-interim injunction. The trial Court which has already granted ex-parte injunction and after enquiry and on hearing both sides, by order dated 10.10.2007, has made the interim injunction absolute on the basis that respondents 1 and 2 have made out a prima facie case by way of marking Exs.P.1 to P.24 to establish their possession. It is also seen that an Advocate Commissioner was appointed in this case and he has also noted down the physical features and a report has also been filed.

6. Mr. R. Thiagarajan, learned Counsel appearing for the petitioner would submit that on the face of the records, the suit is not maintainable, since the suit for injunction is filed against the owner, viz., the first defendant in the suit, who is the third respondent in the revision, who has got the property by way of a registered settlement deed and in her turn she entered into a promoter agreement with the revision petitioner, who is the second defendant in the suit, who has in fact put up superstructure in the portion of the property. Therefore, suppressing the above said material facts the suit has been filed. That apart, ration card, electricity card and other relevant materials have been filed without filing a suit for declaration and therefore the suit for bare injunction is not maintainable. It is not known as to how adverse possession can be claimed for declaring the ownership against the real owner who enjoys the property. In the present case, the first defendant is the owner of the property by virtue of a settlement deed. The suit for bare injunction is not maintainable in law. According to him, the trial Judge, without considering the material fact has made the injunction absolute and therefore, the petitioner has approached this Court to correct the error committed by the court below by invoking jurisdiction of this Court under Article 227 of the [Constitution of India](#).

7. The learned Counsel appearing for respondents 1 and 2 would vehemently contend that as against the order of the trial Court, an appeal is provided under Order XLIII of the Civil Procedure Code. When there is an effective alternative

remedy, there is no question of exercising jurisdiction of this Court under Article 227 of the [Constitution of India](#).

8. It is seen that when the matter came up for admission, by order dated 12.10.2007, this Court has passed the following order:

Interim suspension of order dated 10.10.2007 made in I.A.No.980 of 2007 in O.S.No.237 of 2007 on the file of the District Munsif, Alandur.

It is no doubt true that the impugned order of the learned trial Judge is appealable as per the provisions of the Code of Civil Procedure. The learned Counsel for the revision petitioner Mr. R. Thiagarajan would submit that, the petitioner may be given liberty to file an appeal in accordance with law. However, according to him, gross injustice has been done by the court below in not referring the actual factum, viz., the petitioner being in possession of a portion of the suit property and has put up superstructure by spending enormous amount of money. By taking advantage of the interim injunction, which was made absolute by the trial Court, the plaintiffs in the suit, who are in possession of one portion of the suit property are attempting to enter into the remaining portion also and demolishing the building put up by the revision petitioner, being the promoter by spending huge amount of money. Therefore, according to the learned Counsel for the petitioner, pending filing of appeal, the interest of the petitioner must be protected.

9. On the other hand, the learned Counsel appearing for respondents 1 and 2 would vehemently contend that the first and second respondents are in possession of the entire property and the superstructure as on date available on the suit property is put up by them. The learned Counsel has also produced photographs to substantiate his contention. A reference to the photographs show that respondents 1 and 2 are residing in a portion of the property and it is in a very dilapidated condition.

10. In any event, the learned Counsel for the revision petitioner would submit that the petitioner would not disturb the portion of respondents 1 and 2, wherein they are residing and till filing of the appeal, the building which has been put up by him should not be demolished. The learned Counsel would also rely upon various

judgments of the Apex Court as well as this Court, including the judgment in *Surya Dev Rai v. Ram Chandrer Rai and Ors.* : AIR 2003 SC3044 . The Supreme Court in the said case has held that it is well settled that the power of superintendence conferred on the High Court under Article 227 is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.

11. In *Annapoorni v. Janaki* 1995 (1) LW 141 M. Srinivasan,J. (as he then was) has also held, while dealing with power of the superintendence of the High Court under Article 227 of the [Constitution of India](#) that it is not only administrative, but also judicial.

12. In *Renuka Devi v. Manoharan* : (1998)IIMLJ245 , S.S. Subramani,J. while dealing with the power of superintendence of the High Court under Article 227 of the [Constitution of India](#) in respect of the orders of interim injunction has held as follows:

6. The argument of the learned Counsel for the petitioner is that the petitioner can only file a suit for recovery of possession and she cannot take the law into her own hands. I do not think that the court will be helpless in such cases. The person coming to the Court with false case, with the aid of false and fraudulent document, is not entitled to any equity, nor he is entitled to get any orders in his favour. The law is settled that such cases should be thrown out even at the threshold. The court has also duty to see that as far as possible, litigation is avoided, and multiplicity of proceedings are avoided, and when the Court has such a power to grant relief, it should not close its eyes on technicalities.

13. While dealing with the effect of Section 115 of Code of Civil Procedure after the Amendment Act 46 of 1999, which came into effect from 01.07.2002, the Supreme Court has held that such amendment has not affected the jurisdiction of

the High Court under Articles 226 and 227 of the [Constitution of India](#). It was further held that even if the remedy of revision was excluded by the amendment, it is open to challenge and continue to be subject to, certiorari and supervisory jurisdiction of the High Court. That was a decision held in *Yeshwant Sakhalkar and Anr. v. Hirabat Kamat Mhamai and Anr.* : (2004)6SCC71 , based on the previous judgment of the Supreme Court in : AIR 2003 SC3044 (cited supra).

14. On the factual situation as stated above, it remains true that the petitioner has got effective alternative remedy by way of appeal from the impugned order of the trial Court in making the injunction absolute as provided under Order XLIII of the Code of Civil Procedure.

15. In view of the same, the civil revision petition is dismissed with liberty to the petitioner to approach the appropriate appellate Court within a period of 10 days from the date of receipt of the copy of this order. However, considering the peculiar situation of the case, viz., that both the petitioner and respondents 1 and 2 are claiming to be in possession and have also put up construction respectively, I am of the considered view that in order to safeguard the interest of both parties, an order of status quo is to be maintained till the petitioner approaches the appellate Court as directed above.

In the result, the civil revision petition is dismissed with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

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