

Ramesh Chander Vs. C.indirani

Ramesh Chander Vs. C.indirani

SooperKanoon Citation : sooperkanoon.com/965680

Court : Chennai

Decided On : Mar-22-2013

Judge : M. Venugopal

Appellant : Ramesh Chander

Respondent : C.indirani

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Date:- 22.03.2013 Coram The Honourable Mr. Justice M. VENUGOPAL C.R.P. PD.No.3039 of 2010 and M.P. No.1 of 2010 Ramesh Chander ... Petitioner ..Vs.. C. Indirani ... Respondent Civil Revision Petition filed against the order dated 29.12.2009 passed in C.M.A. No.27 of 2009 on the file of the Principal Subordinate Court, Salem, confirming the fair and final order dated 20.9.2009 made in I.A. No.40 of 2009 in O.S. No.33 of 2009 on the file of the Principal District Munsif Court, Salem. For Petitioner : Mr. T. Murugamanickam For Respondents : Mr. S. Kalyanaraman ` O R D E R The Petitioner/Respondent/Defendant has preferred the present Civil Revision Petition as against the judgment dated 29.12.2009 passed in C.M.A. No.27 of 2009 by the Learned Principal Subordinate Judge, Salem, confirming the order dated 20.9.2009 passed in I.A. No.40 of 2009 in O.S. No.33 of 2009 by the learned Principal District Munsif, Salem.

2. According to the Learned counsel for the Petitioner/Defendant (landlord), the Learned Principal Subordinate Judge, Salem, while dismissing C.M.A. No.27 of 2009 and the Learned Principal District Munsif, Salem, while passing orders in I.A.

No.40 of 2009 in O.S. No.33 of 2009, have not taken into account of the fact that the Respondent/Plaintiff has not filed any document to establish her possession on the date of filing of the suit.

3. Advancing arguments, the Learned counsel for the Petitioner/Defendant submits that the Respondent/Plaintiff has not filed any documents from 19.1.2008 to 7.1.2009 and the very fact the Respondent/Plaintiff has vacated the suit premises as per records will clinchingly prove that there has been a termination of tenancy. Further viewed in that perspective, there may not be any presumption that the relationship of Landlord and tenant continued in favour of the Respondent/Plaintiff.

4. Finally, it is the submission of the Learned counsel for the Petitioner/Defendant that no document has been filed by the Respondent/Plaintiff to prove her possession after 18.1.2008.

5. Per contra, it is the contention of the Learned counsel for the Respondent/Plaintiff (tenant) that the trial Court has allowed the interim injunction application in I.A. No.40 of 2009 filed under Order 39 Rules 1 and 2 of the Civil Procedure Code by the Respondent/Plaintiff as Petitioner and further, the trial Court has come to a categorical conclusion that the Respondent/Plaintiff as a lessee is in possession of the suit property and accordingly, granted the relief of temporary injunction in her favour.

6. At this stage, it is to be noted that the said I.A. No.40 of 2009 in O.S. No.33 of 2009 on the file of the trial Court has been disposed of on 20.9.2009 after contest between the parties. Further, on the side of the Respondent/Plaintiff/Petitioner as a power agent, P.W. 1 has been examined and documents Ex.A1 to A8 have been marked. On the side of the Revision Petitioner, witnesses Ex.R1 to R3 have been examined and Ex.B1 to B25 have been marked.

7. Being dissatisfied with the order passed by the trial Court in O.S. No.33 of 2009, the Revision Petitioner/landlord has preferred C.M.A. No.27 of 2009 on the file of the Learned Principal Subordinate Judge, Salem. On 29.12.2009, the Learned Principal Subordinate Judge has delivered a judgment in C.M.A. No.27 of 2009 on

merits by holding that the Respondent/Plaintiff/Petitioner is entitled to get the relief of temporary injunction as prayed for by her in I.A. No.40 of 2009 and consequently, dismissed the Appeal without costs.

8. It is to be borne in mind that the main suit in O.S. No.33 of 2009 on the file of the trial Court (filed by the Respondent/Plaintiff/Tenant) is one for permanent injunction restraining the Defendant (Revision Petitioner) and his men from in any manner evicting the Plaintiff (Respondent) from the suit property by force except by due process of law. A detailed written statement has been filed by the Revision Petitioner/landlord before the trial Court.

9. In this connection, this Court pertinently points out that the relief sought for in the main suit in O.S. No.33 of 2009 is for permanent injunction. Likewise, the relief prayed for in I.A. No.40 of 2009 is also for interim injunction, which is one and the same. Ordinarily, in a matter like this, where the main relief sought for in the suit is for permanent injunction and the interim relief sought for in I.A. No.40 of 2009 is for interim injunction, then it is desirable for the Court of law to take up the main suit where the relief of permanent injunction is sought for and to dispose of the main case on merits, of course after providing due and enough opportunity to all the parties concerned.

10. Be that as it may, the trial Court in I.A. No.40 of 2009 has come to a categorical conclusion that the Respondent/Plaintiff is a Lessee and is in possession of the suit property and consequently, granted the relief of temporary injunction in her favour. Also, the First Appellate Court has concurred with the view taken by the trial Court in I.A. No.40 of 2009 and has consequently dismissed the Civil Miscellaneous Appeal No.27 of 2009 on 29.12.2009.

11. On going through the order passed by the trial Court in I.A. No.40 of 2009 in O.S. No.33 of 2009 dated 20.9.2009 as well as the contents of the judgment passed by the First Appellate Court in C.M.A. No.27 of 2009 dated 29.12.2009, this Court is not inclined to take a different/deviant view than the one taken by the Courts below. Per contra, this Court is in complete agreement with the view taken by the trial Court while passing orders in I.A. No.40 of 2009 in O.S. No.33 of 2009 dated 20.9.2009 as well as the conclusion arrived at by the First Appellate Court in

C.M.A. No.27 of 2009 as per the judgment dated 29.12.2009. Resultantly, the Civil Revision Petition fails.

12. In the result, the Civil Revision Petition is dismissed leaving the parties to bear their own costs. In view of the fact that the suit is of the year 2009 and nearly four years have elapsed till now, this Court, in the interest of justice, equity, fair play, good conscience and even as a matter of prudence, directs the trial Court to dispose of the main suit in O.S. No.33 of 2009 within a period of four months from the date of receipt of a copy of this order and report compliance to this Court without fail. The parties are directed to lend their helping hand and assistance in regard to the completion of proceedings before the trial Court in a complete and comprehensive manner. Consequently, the connected M.P. is also dismissed. 22.03.2013 Index:- Yes. Internet:- Yes. ssa. To 1. The Principal Sub Court, Salem.

2. The Principal District Munsif Court, Salem.

3. The Sub Assistant Registrar (Judicial Section), Madras High Court, Madras. - To watch and report. M. VENUGOPAL, J.

ssa. C.R.P. PD.No.3039 of 2010 and connected M.P. 22.03.2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com