
(1991) 11 MAD CK 0041
In the Madras High Court

T. Sreenga Nachiyar and Another

APPELLANT

Vs

G.V. Srinivasa Naicker

RESPONDENT

Date of Decision : 07-11-1991

Acts Referred:

Citation : (1992) 1 MLJ 449

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—The civil revision petition is directed against an order of injunction made in favour of the respondent, who is the plaintiff in O.S. No. 276 of 1985 on the file of District Munsif, Aruppukkottai. The suit is one for declaration of plaintiffs title and injunction restraining the defendants from interfering with the plaintiffs possession. The plaintiff has also prayed for a decree for part of the rent as payable to him. The plaintiff filed I.A. No. 728 of 1985 for an injunction restraining the defendants from collecting rent from the fourth defendant, who was in possession as a tenant. Interim injunction was granted in the first instance and defendants 1 to 3 filed an application I.A. No. 73 of 1987 to vacate the interim injunction. By order dated 3.3.1987, the Principal District Judge, Ramanathapuram at Madurai, held that the fourth defendant was in possession as a tenant of the first defendant and the latter was the only person entitled to collect rent from the fourth defendant. On that footing he vacated the injunction and dismissed the application for injunction.

2. The plaintiff filed I.A. No. 202 of 1990 for an injunction restraining the defendants from interfering with his possession. In the affidavit filed in support of the application the plaintiff stated that the fourth defendant vacated the premises and thereafter, he was in possession as owner of the building. The plaintiff has not explained how he got possession from the fourth defendant handed over possession to him. Nor is it the case of the plaintiff that he resorted to any process known to law and got possession of the property.

3. The courts below have granted injunction in favour of the plaintiff on the

footing that he is in possession on the date of the application. The courts below have also taken the view that the counter-affidavit filed by the petitioners herein admits in a way the possession of the plaintiff.

4. The orders of the courts below are unsustainable. I have already referred to the fact that on 3.3.1987 the Principal District Judge found that the fourth defendant was the tenant of the first defendant and that the latter was entitled to collect the rent. Hence, it was a clear finding that the first defendant was in possession of the property through his tenant and the plaintiff was not in possession at that time. Even assuming that the plaintiff got possession subsequent thereto on the fourth defendant vacating the premises unless it is alleged and proved before the court that the plaintiff got possession by a lawful process, he is not entitled to pray for injunction against the defendants. The relief of injunction is an equitable remedy and the person who seeks the same must come to court with clean hands. He who seeks equity must do equity. In the present case, there is no averment by the plaintiff as to how he got possession after the fourth defendant vacated the premises.

5. Learned Counsel for the plaintiff urges that he took possession of his 1/4th share and the defendants took possession of their share after the fourth defendant vacated. But, no such case is put forward in the affidavit filed by the plaintiff in support of his application for injunction.

6. In the circumstances, the orders of the courts below are set aside and I.A. No. 202 of 1990 in O.S. No. 276 of 1985 on the file of District Munsif, Aruppukkottai is dismissed. The parties will bear their respective costs.

7. The suit is already six years old and in the interests of justice, it should be disposed of immediately. The trial court is directed to dispose of the suit on or before 31.3.1992. It is also made clear that any observation made in the orders of the courts below and in this order of mine shall not sway in any manner the trial court while disposing of the suit. The suit shall be disposed of only on the basis of the evidence adduced therein