

## Thanislas Vs Vijaya Perumal, Janarthana Prasad and Padmini

**Court:** Madras High Court (Madurai Bench)

**Date of Decision:** Aug. 22, 2011

**Hon'ble Judges:** C.S. Karnan, J

**Bench:** Single Bench

**Advocate:** M. Kalyanasundaram for P. Prabhakaran, for the Appellant; M. Ramadhass, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

C.S. Karnan, J.

The revision Petitioner/Appellant/Plaintiff has filed the above revision to set aside the order made in C.M.A. No. 1 of

2011 dated 21.04.2011 on the file of the District Judge, Kanyakumari District at Nagercoil in confirming the order made in I.A. No. 389 of 2010

dated 10.12.2010 in O.S. No. 50 of 2010 on the file of the Subordinate Judge, Kuzhithurai.

2. The short facts of the case are as follows:

(i) The revision Petitioner/Plaintiff had entered into an agreement with the father of the Respondents/Defendants on 06.03.2009 for purchasing the

suit property for a sum of Rs. 1,87,600/-. Out of this total sale consideration, a sum of Rs. 1,50,000/- was paid by way of cash on the date of

agreement. After the agreement, the father of the Defendants expired. Hence, the Plaintiff had issued legal notice to the Defendants calling upon

them to execute the sale deed after receiving the balance sale consideration of a sum of Rs. 37,600/-. The same was not complied with by the

Defendants. Hence, the Plaintiff has filed the suit for specific performance of contract of sale to direct the Defendants to execute the sale deed in

favour of the Plaintiff in respect of the plaint schedule property on receipt of the balance sale consideration of Rs. 37,600/-, failing which it may be

executed by this Court and other relief.

(ii) The said suit was opposed by the Defendants on various grounds. One of the main grounds in the counter was that the sale agreement was a

forged one.

(iii) While so, the Defendants have filed an interlocutory application in I.A. No. 389 of 2010 restraining the revision Petitioner/Plaintiff from

disturbing the Defendants' peaceful possession over the suit property in any manner. The Plaintiff had also filed counter statement and resisted the

injunction application. After hearing the arguments of the Learned Counsel on either side, and on perusing the plea of both parties, the learned

Subordinate Judge, Kuzhithurai was pleased to grant interim injunction restraining the revision Petitioner/Plaintiff, on 10.12.2010. Aggrieved by the

said interim order, the Plaintiff has filed civil miscellaneous appeal No. 1 of 2011 before the District Court, Kanyakumari at Nagercoil. The learned

Judge after hearing the arguments of the Learned Counsels on either side and on perusing the order and decretal order passed in the said interim

injunction application has dismissed the civil miscellaneous appeal. Aggrieved by the order and decretal order passed in C.M.A. No. 1 of 2011,

dated 21.04.2011 by the learned District Judge, Kanyakumari District at Nagercoil, the above civil revision petition has been filed by the Plaintiff

to set aside the said orders of the courts below.

3. Mr. M. Kalyanasundaram, learned Senior Counsel for the revision Petitioner argued that as per sale agreement dated 06.03.2009, the suit

property was delivered to the revision Petitioner after receiving major sale consideration i.e., a sum of Rs. 1,50,000/- out of a total sale

consideration i.e., a sum of Rs. 1,87,600/-. As such, the interim application which has been filed by the Defendants is not maintainable. The

learned Senior Counsel further submitted that the learned Judges of the Courts below have not well considered the three principles namely prima

facie case, balance of convenience and irreparable loss. Without considering these aspects, the interim injunction granted by the learned trial Judge

is not sustainable in law. The same principles have not been discussed by the learned appellate Judge, namely, District Judge, Kanyakumari District

at Nagercoil. The Learned Counsel further argued that the whole case has arisen on the basis of the sale agreement which is a vital document, in

which there is a contention that the suit property was delivered to the Plaintiff on the date of agreement i.e, 06.03.2009. The learned Senior

Counsel further argued that the said property is being enjoyed by the Plaintiff from the date of sale agreement. As such, the interim order granted

by the learned Subordinate Judge, Kuzhithurai is not maintainable.

4. The Learned Counsel for the Respondents argued that the suit property is worth several lakhs. The said sale agreement is a forged one, that was

alleged to be executed by the late father of the Defendants. Further the Defendants are enjoying the suit property. The suit property is a coconut

garden and the fruits are being harvested by the Defendants. The Plaintiff had attempted to interfere with the Defendants' suit property. Hence, the

Defendants have obtained interim injunction restraining the Plaintiff after prima facie case has been made out by the Defendants. There is No.

infirmity in the said interim injunction order. As such, the civil revision petition is not maintainable.

5. Per contra, the learned Senior Counsel argued that there is No. crystal clear findings or proof to show who is in possession of the suit property.

As such, status quo can be granted.

6. In the facts and circumstances of the case and arguments advanced by the learned Senior Counsel for the Petitioner and the Learned Counsel

for the Respondent and on perusing the orders of the courts below, this Court is of the considered opinion that a direction shall be given to the

learned trial judge, to dispose of the case on merits as a number of issues have to be looked into. Accordingly, this Court directs the learned

Subordinate Judge, Kuzhithurai to dispose of the main case in O.S. No. 50 of 2010 within a period of three months from the date of receipt of this

order, without being influenced by this Court's discussions. Status quo order, as suggested by the learned Senior Counsel, cannot be granted at

this stage as there is an earlier injunction order existing over the property.

7. In the result, the above civil revision petition is disposed of with the above observations. Consequently, the order and decretal order passed in

C.M.A. No. 1 of 2011 dated 21.04.2011 on the file of the District Judge, Kanyakumari District at Nagercoil in confirming the order passed in

I.A. No. 389 of 2010 dated 10.12.2010 in O.S. No. 50 of 2010 on the file of the Subordinate Judge, Kuzhithurai will remain inforce, till disposal

of the main suit. Connected miscellaneous petition is closed. There is No order as to costs.