



C.R.P(MD).No.1053 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1053 of 2022

and

CMP(MD)No.4223 of 2022

- 1.Kalaiselvi
- 2.Mohan
- 3.Ponmalar
- 4.Jeyabalan
- 5.Poongodi
- 6.Maanvizhi
- 7.Minor.Dharshana Nachiyar
(represented by the Grandmother and Guardian
1st Petitioner/Kalai Selvi)

... Petitioners/Respondents 1 to 7/Plaintiffs

Vs.

- 1.A.R.Mohamed Unais
(Power of Attorney is deleted vide
court order dt 20.03.23 made in
CRP(MD) No.1053/2022 by CSNJ)

... Respondent/Petitioner/3rd Party

- 2.The State represented by the District Collector,
Having office at Sethupathy Nagar,
Ramanathapuram Town.
- 3.The Revenue Divisional Officer,
Having office at G.H.Road,
Ramanathapuram Town.



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4.The Tahsildar,
Having office at
Vandikara Theru,
Ramanathapuram Town.

5.The Chief Educational Officer,
having office at OM Sakthi Nagar,
Aranmanai Salai,
Ramanathapuram Town.

6.Nubulath Beevi

7.Fathuma Beevi

8.Panchavarnam

9.Mohamed Hanifa

10.The President,
North Street Mosque Jamath,
Puthu Madam,
Ramanathapuram Taluk,
Ramanathapuram District.

11.Ramamoorthy

12.Pasool Raheem

13.Arul Raj

.... Respondents 3 to 13/Respondents
8 to 19/Defendants

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records of the impugned fair and decreetal order in I.A.No.265/2021 in O.S.No.45/2020 dated 25.11.2021 on the file of the learned Principal District Court, Ramanathapuram. quash the same and directing the trial court to reopen the suit in O.S.No.45/2020 forthwith and granting such other and further reliefs which this Hon'ble court deems fit and proper in the circumstances of this case.



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For petitioners : Mr.RM.Arun Swaminathan

For Respondent No. 1 : Mr.J.Barathan

ORDER

This petition has been filed seeking to quash the impugned fair and decreetal order in I.A.No.265/2021 in O.S.No.45/2020, dated 25.11.2021, on the file of the learned Principal District Court, Ramanathapuram, and directing the trial court to reopen the suit in O.S.No.45/2020.

2.The petitioners are the plaintiffs before the learned Principal District Court, Ramanathapuram, in O.S.No.45 of 2020. In the said suit, the first respondent herein represented by his power of attorney filed an application in I.A.No.265 of 2021 under Order 1 Rule 10(2) of CPC to impleade himself as a defendant. The said application was allowed by the Principal District Court, Ramanathapuram, vide impugned fair and decreetal order dated 25.11.2021. Aggrieved by the same, the petitioners, who are the plaintiffs in the said suit have filed this Civil Revision Petition.

3.Specifically, reference is made to the affidavit filed by the first respondent before the Court in I.A.No.265 of 2021, wherein, the first respondent herein has stated that the land in question in S.No.147/1A1A has



been gifted by his mother along with the other lands in S.No.156/1B1 and S.No.147/8 to him.

4.The specific case of the petitioner is that the petitioners are the *dominus litis*. They are entitled to chose the parties and therefore the first respondent have indeed rights over the property by a gift deed in favour of the Government. It is further submitted that the petitioners who are the plaintiffs in O.S.No.45 of 2020 are the owners of the land and have been in possession of the land measuring on extent of 5.5 acres in S.No.147/1A1A and an extent of 2.5 acres had already been sold and the balance of 3 acres which has been partitioned among the petitioners herein.

5.It is submitted that the first respondent is a stranger to the proceedings and that the suit has been filed only for a declaration and permanent injunction to restrain the official respondents or their agents from interfering with the compound wall sought to be put up by the petitioners' safeguard in the interest of the property.

6.Opposing the present Civil Revision Petition, the learned counsel for the first respondent submits that the conduct of the petitioners is dubious. It



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is submitted that earlier O.S.No.24 of 2014 was filed among the petitioners for partition among the family members. It is submitted that in O.S.No.24 of 2014, a preliminary decree was also secured by them on 22.01.2015 in a fraudulent manner. It is submitted that the fourth defendant, who is the fifth defendant in O.S.No.45 of 2020 and all the other defendants remained absent in the said proceedings. Thus the *ex-parte* preliminary decree was obtained by filing a collusive suit in O.S.No.24 of 2014. It is further submitted that the said suit partition is itself based on the gift deed which is said to have been executed by the Late.Kajendran Pandian, the father of the petitioners and few revenue records which were also cancelled. It is further submitted that the land was gifted by the first petitioner's mother to the fifth respondent for constructing a school. It is submitted that the contesting petitioners, who are the plaintiffs in O.S.No.45 of 2020, cannot inter meddle with the land which was gifted by the first respondent's mother for constructing a School. Therefore, the Trial Court has rightly allowed the application for impleading the first respondent as a defendant. Further submitted that the first respondent has right under Section 55(1)(g) of the Transfer of Property Act,1982 in terms of interpretation given by this Court and therefore, the order passed by the Trial Court does not require any interference on the hands of this Court.



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7.The learned counsel for the petitioners would submit that an Advocate Commissioner was also appointed prior to impleading of the first respondent vide order in I.A.No.115 of 2020. The Advocate Commissioner also given a report on 04.02.2021 wherein it has been categorically stated as under:-

7.வரையடம் 1ல் கண்ட A முதல் A1 வரையிலான பகுதி பாதையாக இருந்தது. A முதல் A1 வரையிலான பகுதி 8 சதுர மீட்டர் ஆக இருந்தது. வரையடம் 1ல் சர்வே எண்.147/1A1Aல், A, A1, A2, A3, Aல் கண்ட பகுதியானது பாதையாக காணப்பட்டது. மேற்கண்ட A1, A2, A3 பகுதியும் தகுந்த இடைவெளியில் வேலிக்கற்கள் ஊன்றப்பட்டு இருந்தன.

8.சர்வே எண் 147/1A1A ல் கண்ட சொத்தின் வரையடம் 1ல் கண்ட F பாயிண்டில் S.O.M.அப்துல்ரஸீன்-நிஜாம்பேகம் அவர்களால் புதுமடம் அரசு பெண்கள் உயர்நிலைப்பள்ளிக்கு தானமாக வழங்கப்பட்ட 5 (ஐந்து) ஏக்கர் நிலம் தமிழக அரசு மாவட்ட நிர்வாகம் கல்வித்துறைக்கு சொந்தமானது. இந்த இடத்தை ஆக்கிரமிப்பு செய்வதோ, வாங்குவதோ, விற்பதோ சட்டப்படி குற்றமாகும். இப்படிக்கு தமிழக அரசு மாவட்ட நிர்வாகம் மாவட்ட கல்வித்துறை என்ற அறிவுப்பு பலகை வைக்கப்பட்டு இருந்தது. இந்த பலகை மேலும் மூன்று இடங்களில் சர்வே எண்.147/1A1A ல் வைக்கப்பட்டு இருந்தது. இந்த பலகை மேலும் மூன்று சர்வே எண். 147/25ல் வைக்கப்பட்டு இருந்தது.

8.I have considered argument advanced by the learned counsel for the petitioners and the learned counsel for the first respondent.

9. The impugned order allowing the petition for impleading the first respondent does not call for any interferences. The Trial Court can consider



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the rival contentions raised by the first respondent claiming that the land in question gifted for public purpose was being attempted to be usurped by the petitioners' family. Whether indeed the petitioners and the petitioners' family were usurping the land gifted by the first respondent's mother by gift deed dated 22.02.2011 is true or not can be determined only after trial and not this stage. In my view that the order does not called for any interference.

10.The Trial Court is directed to expedite the trial in O.S.No.45 of 2020 and pass the judgment and decree after written statement is filed by the the first respondent. The petitioners shall amend the cause title within a period of 15 days from the date of receipt of a copy of this order. The first respondent shall file written statement thereafter within a period of 30 days.

11.The present Civil Revision Petition stands dismissed with the above observation and directions. No costs. Consequently, the connected miscellaneous petition is closed.

29.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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C.SARAVANAN,J.

dss

To

- 1.The Principal District Court,
Ramanathapuram.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madurai High Court, Madurai.

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and

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