

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.2694 of 2015

and

M.P. No.1 of 2015

R.Jothi

.. Petitioner/Defendant

Vs.

1.M.Kalaivani

2.R.Dhanalakshmi

.. Respondents/Plaintiffs

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 22.04.2015 in I.A.No.6253 of 2014 in O.S.No.1194 of 2014 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

For Petitioner :Ms.T.Jayanthi

For Respondents :No appearance

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 22.04.2015 in I.A.No.6253 of 2014 in O.S.No.1194 of 2014 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

2.The suit property originally belongs to one Ramadoss, who has two daughters and one son. The son namely, Jothi has filed a suit in O.S.No.12344 of 2010 for recovery of possession of 1st floor of the schedule mentioned property and also permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property stating that the suit property was originally purchased by his great grand mother viz., (late) Ellammal, W/o Murugappa Naicker vide registered sale deed dated 17.07.1964. She settled the same in favour of the revision petitioner's father viz., (late) Ramadoss under a registered settlement deed dated 10.04.1978. The said Ramadoss in turn settled the property in favour of the revision petitioner on 16.04.2003, who has accepted and acted upon. The revision petitioner further stated that some of the properties are in possession and enjoyment of the defendants, who are his sisters. Hence, he was constrained to file the suit in O.S.No.12344 of 2010 for recovery of possession.

3.The respondents herein have filed a suit in O.S.No.1194 of 2014 for declaration that the settlement deed dated 16.04.2003 executed by late Ramadoss in favour of the revision petitioner is null

and void and also for partition and separate possession of 1/3rd share in the suit property. The respondents herein have also filed an application in I.A.No.6253 of 2014 in O.S.No.1194 of 2014 for a direction to the revision petitioner/Jothi to deposit the monthly rental collections from the tenants to the credit of the suit. The trial Court, after hearing both sides, allowed the application, against which, the present revision has been preferred by the revision petitioner/Jothi.

4.Learned counsel for the revision petitioner submits that the trial Court has misconstrued the fact that the suit filed by the respondents is simple suit for partition and separate possession of 1/3rd share. But the suit filed by the respondents is for declaring the settlement deed executed by the father of the revision petitioner on 16.04.2003 is null and void and also for partition, separate possession and permanent injunction. The trial Court has failed to consider the fact that the revision petitioner has already filed a suit in O.S.No.12344 of 2010 for recovery of possession from the respondents herein on the basis of the settlement deed executed by his father on 16.04.2003. He further submits that the respondents herein have filed the suit only in the year 2014. Their father

Ramadoss died on 15.08.2004. So the respondents filed the suit after 10 years, which is vexatious. There was a specific recital in the settlement deed that the daughters have no right over the property. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revision.

5. Even though the matter is posted for hearing arguments on the side of the respondents for the past several hearings, no one represented on behalf of them and no arguments advanced on their side.

6. Heard the submissions made by the learned counsel for the revision petitioner and perused the typed set of papers.

7. It is an admitted fact that the property belongs to one Ramadoss and he got the same through his grand mother by way of settlement deed dated 10.04.1978. He executed the settlement deed in favour of the revision petitioner on 16.04.2003. On a perusal of the pleadings in O.S.No.12344 of 2010, it reveals that the first floor of the suit property has three portions and the same was let out to rent, which was vacated by the tenants. The respondents

herein were jointly broken the lock of each one portion (i.e.) two portions and illegally occupied by the respondents and other portions were occupied by the tenants. The rental income has been received by the revision petitioner.

8. Admittedly, the suit filed by the respondents in O.S.No.1194 of 2014 is not a simple suit for partition and separate possession, it is a suit for declaring the settlement deed dated 16.04.2003, which was executed by late Ramadoss in favour of the revision petitioner, is null and void. Under such circumstances, the trial Court has erroneously allowed the application, without deciding the right over the property to the respondents. Because in the settlement deed itself, it was stated that the daughters have no right over the property, since the father Ramadoss has got the same by way of settlement deed dated 10.04.1978. Moreover, the property is a separate property of the father and he is entitled to do as he desires. In such circumstances, the trial Court has erroneously given a direction to the revision petitioner to deposit the rental collections from the tenants. Therefore, the impugned order passed by the trial Court is unsustainable and it is liable to be set aside and it is hereby set aside.

R.MALA,J.

Kj

9.In fine, the Civil Revision Petition is allowed. No costs.
Consequently, connected Miscellaneous Petition is closed.

11.12.2015

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Index:Yes/No

To

XVI Assistant Judge, City Civil Court, Chennai.

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