

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.3787 of 2015

and

M.P.No.1 of 2015

Rajeswari
W/o.Mari Chettiar

.. Petitioner/9th Defendant

Vs.

1.M.Shankar

.. Respondent/Plaintiff

2.K.Govindaraju

3.G.Varudharaju

4.G.Krishnaraj

5.Kousalya

6.Menakarani

7.Radha

8.V.Subashini

9.Sanmugam

.. Respondents/Defendants 1 to 8

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.126 of 2012 on the file of the Principal Subordinate Court, Salem.

For Petitioner : Mr.K.Selvaraj

ORDER

Heard the learned counsel appearing for the revision petitioner.

2. The petitioner has come up with the present Civil Revision Petition to strike off the plaint in O.S.No.126 of 2012 on the file of the Principal Subordinate Court, Salem stating that originally the plaintiff/1st respondent herein is the owner of the property and he had executed a sale deed dated 23.03.2009 in favour of the first defendant. Thereafter, the plaintiff/1st respondent has filed the suit seeking for canceling the sale deed dated 23.03.2009 registered before the Sub-Registrar, Veerapandi on 24.03.2009 on the ground of fraud, undue influence and misrepresentation on the part of the defendants 1 to 7 against the plaintiff and also for recovery of possession.

3. The learned counsel appearing for the revision petitioner would submit that the 1st respondent/plaintiff is a major aged more than 21 years and hence, he had executed the sale deed in his own accord. So, the prayer seeking to strike of the plaint is a mere abuse of process of Court.

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

5. The first respondent/plaintiff has filed the suit in O.S.No.126 of 2012 on the file of the Principal Subordinate Court, Salem seeking to pass a decree in his favour and against the defendants by

"a) Canceling the alleged Sale Deed Document No.1020/2009 dated 23.03.2009 and registered before the Sub-Registrar, Veerapandi on 24.03.2009 on the grounds of fraud, undue influence and misrepresentation on the part of the defendants 1 to 7 against the plaintiff;

b) Directing the defendants 1 and 8 and 9 to deliver the possession of the suit property to the plaintiff without creating any resistance or obstruction;

c) Directing the defendants 1 to 6 and 8 and 9 to

deliver the original Sale Deed Document No.912/2000 registered before the Sub-Registrar, Veerapandi dated 7.6.2000 and its parents documents relating to the suit property to the plaintiff by means of mandatory injunction;

d) restraining the defendants 1 & 8 and 9 and their heirs from in any manner alienating and encumbering the suit property to any 3rd parties by means of permanent injunction;

e) awarding the costs of this suit payable by the defendants;

and

f) granting such other and further reliefs as this Hon'ble Court may deem fit in the circumstances of the case and thus render justice."

6. In the plaint, it has been clearly stated that the 1st defendant is none other than the senior paternal uncle of the plaintiff, i.e., the father of the plaintiff and the 1st defendant are brothers. The defendants 2 and 3 are the sons of the 1st defendant. 4th defendant is the daughter of the 1st defendant, 5th defendant is the wife of the 2nd defendant and 6th defendant is the wife of the 3rd defendant. It was

further stated in the plaint that the parents of the plaintiff died on 27.12.2008 under suspicious circumstances leaving behind the plaintiff as their sole heir to succeed their estate.

7. While so, within a period of three months from the date of death of the parents of the plaintiff, the alleged sale is said to have been taken place on 23.03.2009. So, the plaintiff was forced to file a suit seeking to cancel the alleged Sale Deed Document No.1020/2009 dated 23.03.2009 and registered before the Sub-Registrar, Veerapandi on 24.03.2009 on the grounds of fraud, undue influence and misrepresentation on the part of the defendants 1 to 7 against the plaintiff.

8. So, considering the proximity of time between the date of death of the parents of the plaintiff and the date of execution of the alleged sale deed, this Court is of the view that there is sufficient pleading as per Order 6 Rule 4 CPC and so, the genuineness of the document had to be decided only at the time of trial. Thus, the prayer sought for in this Civil Revision Petition to strike of the plaint cannot be granted.

9. Accordingly, the Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

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To

The learned Principal Subordinate Court,
Salem

R.MALA, J.

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