

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Civil Revision Petition (PD) No.4924 of 2011

and

M.P.No. 1 of 2011

1.Mrs.R.Viniselvi

2.Mr.Ramesh

... Petitioners

..Vs..

1.Mr.E.Raghupathy

2.Mr.E.Lakshmipathy

3.Mrs.Adhilakshmi

4.E.Jagadeesan

5.Mrs.Ramani

6.Mrs.Vimala

7.Ms.Sulochana

8.Mrs.Latha

... Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the Order and Decreetal Order dated 09.09.2011 made in I.A.No.1167 of 2009 in O.S.No.98 of 2009 on the file of the District Munsif Court, Ambattur.

For petitioner : Mr.R.Thirugnanam

For Respondents : No appearance

ORDER

This memorandum of Civil Revision has been filed against the fair and decreetal order dated 09.09.2011 and made in the Interlocutory Application

in I.A.No.1167 of 2009 in O.S.No.98 of 2009 on the file of the learned District Munsif, Ambattur.

2) The revision petitioners herein are the defendants in the suit in O.S.No.98 of 209 whereas the respondents 1 to 8 are the plaintiffs.

3) On perusal of the records, it is revealed that the respondents 1 to 8 have filed the above suit as against the revision petitioners, seeking the relief of permanent injunction against the revision petitioners restraining them from interfering with their peaceful possession and enjoyment of the suit property and not to proceed with construction in the said property.

4) This suit was resisted by the revision petitioners by filing their written statement. The revision petitioners being the defendants have taken out an application in I.A.No.1167 of 2009 under Order 7 Rule 11 of the Code of Civil Procedure to dismiss the suit in O.S.No.98 of 2009 with exemplary costs of the revision petitioners, as there is no cause of action to maintain the suit. This petition was contested by the respondents/plaintiffs.

5) After hearing both sides, the District Munsif, Ambattur has proceeded to dismiss the petition on the ground that nothing was found on

record to dismiss the suit, as the respondents/plaintiffs had made out cause of action for maintaining the suit.

6) Impugning the said order dated 09.09.2011, present revision petition has been preferred by the petitioners/defendants.

7) Heard Mr.R.Thirugnanam, learned counsel appearing for the revision petitioners. Despite service of notice, the respondents 1 to 8 who are the plaintiffs in the above suit have not chosen to appear, hence, they are called absent.

8) On hearing Mr.R.Thirugnanam, learned counsel appearing on behalf of the revision petitioners and on perusal of the grounds of revision along with the impugned order, the following order is being passed on merits in the absence of the respondents.

9) The suit property is comprised in Survey No.296/2,bearing patta No.220, measuring an extent of 1 acre 87 cents. The respondents/plaintiffs have claimed that they are the grand children of one Late.Rathinam. The suit property was originally belonged to the said Rathinam who had purchased the same from three persons namely., (i) Mrs.Kokilambal, (ii) Mrs.Rajambal,

(iii) Mr.Swaminathan under a registered sale deed dated 15.06.1942 bearing Doc.No.669/1942 at SRO, Sembiam.

10) It is learnt from the plaint that the said Rathinam had vast extent of properties in and around Padi Mogappair and Ambattur Villages. Of which, the Government had acquired 9 acres for various projects. But, no compensation was paid except a small extent of 35 cents. The said Ratinam had passed away on 13.03.1969.

11) The respondents/plaintiffs 1 to 8 are the legal heirs of one Late. R.Elumalai. It is pertinent to note here that the respondents grand father late.Rathinam was having two female and three male children namely, Mrs.Kannammal, 2) Mrs.Saradammal, 3) R.Elumalai, 4) R.Govindarajan, 5) R.Veeraragavan.

12) R.Veeraragavan died on 03.05.1989, leaving behind Mr.Aravindan as his only legal heir. As far as R.Govindarajan @ Joseph is concerned, he had left the family by conversion leaving the entire property to his two brothers and the entire property of A.Rathinam were fallen on the hands of his two sons namely, R.Elumalai and Veeraragavan. The respondents/plaintiffs have further contended that out of 1 acre 87 cents which was purchased by their

grand father A.Rathinam in the year 1942, the Tamil Nadu Housing Board had acquired only 31 cents. The remaining extent is 1 acre 56 cents. In respect of 31 cents, which was acquired by the Tamil Nadu Housing Board, the survey No. has been shown in the revenue records as S.F.No.296/2A. Out of the remaining extent of 1 acre 56 cents, an extent of 4 cents was left in favour of one Ramalingam. The said 4 cents is comprised in SF.No.296/2B. The remaining balance is 1 acre 52 cents, in respect of which the plaintiffs have obtained the chitta and adangal from the concerned Revenue authorities. According to the respondents/plaintiffs, as it is shown in the revenue records, the above said 31 cents stands in the name of Tamil Nadu Housing Board, leaving the extent of 4 cents. The remaining of extent of 1 acre 52 cents is exclusively belonged to the respondents/plaintiffs. Of which, 35 cents was allotted to R.Veeraragavan who is one of the sons of Late.A.Rathinam and another 1 acre 17 cents was allotted to R.Elumalai, another son of Rathinam who in turn had settled the entire extent of 1 acre 17 cents in favour of his wife Muthammal by a deed of settlement dated 28.08.1950 which was registered under Doc.No.2088/1950 at SRO, Sembiam. The settlement deed dated 28.08.1950 said to have been executed in favour of Muthammal by R.Elumalai was referred to in the award No.7/73 dated 23.03.1973.

13) In the plaint at para No.13, it is seen that when they had requested the Tamil Nadu Housing Board to reconvey the land measuring 1 acre 17 cents, comprised in S.No.296/2 in their favour and as the Housing Board had refused to do so, they had filed a Writ Petition in W.P.No.32034 of 2007 before this Court as against the Tamil Nadu Housing Board which is still pending.

14) In paragraph No.14 of the plaint, the respondents/plaintiffs, have stated that on verification of records, it was noticed that on 22.10.2007, the Tamil Nadu Housing Board represented by the Executive Engineer had executed a reconveyance deed in favour of one A.S.Dilippan represented by the power agent one Mr.D.Nandakumar and that the said reconveyance was made only in respect of 36 cents in Mogappair village, comprised in Survey No.291/1 and 296/1 part and 2 part.

15) Further, they have stated that in the re-conveyance deed, it is clearly stated that the land measuring 1.84 cents is comprised in Survey No.289/1 and 296/1.

16) According to the respondents/plaintiffs, the revision petitioners have been proceeding with the construction in the suit land claiming that the suit schedule property is absolutely belonged to them.

17) Keeping in view of the above fact, the respondents/plaintiffs were constrained to file the above suit as against the revision petitioners, seeking the prayer of permanent injunction. In the affidavit filed in support of the petition in I.A.No.1167 of 2009, the revision petitioners/defendants have stated that the 1st defendant had purchased the property under a registered sale deed from Dilippan and that the said Dilippan had got the property by way of reconveyance from the Tamil Nadu Housing Board under a registered deed dated 22.10.2007 bearing Doc.No.5042 of 2007. Mr.Dilippan had conveyed the property to the 1st defendant Mrs.Viniselvi under a registered sale deed dated 17.03.2008 bearing Doc.No.1138 of 2008 and as such the respondents/plaintiffs had no manner of right, claim or interest over the suit property.

18) They have also contended that the Tamil Nadu Housing Board had acquired a larger extent of land in Survey No.296/2 as per the award No.7/73 dated 23.03.1973. In fact the said lands were also taken possession by the Tamil Nadu Housing Board as on 03.04.1973 and on account of this reason, the respondents/plaintiffs were not having any semblance of right, title or interest over the land comprised in Survey No.296/2. They have also contended that an extent of 36 cents was reconveyed to Mr.Dilippan, who is the vendor of the first defendant and therefore neither the respondents/plaintiffs are in

possession nor they have any title to the said Survey No. 296/1 and 2. They have also contended that the respondents/plaintiffs have no cause of action to maintain the suit as they are not in possession of the property at the time of filing the suit. The petition under Order 7 Rule 11 of CPC was contested by the respondents/plaintiffs by filing their counter affidavit.

19) The learned District Munsif, Ambattur, after hearing both sides had proceeded to dismiss the petition filed by the revision petitioners on 09.09.2011. This order has been impugned in this revision.

20) Mr.R.Thirugnanam, learned counsel appearing for the revision petitioners, while, advancing his argument has drawn the attention of this Court to para 13 as well as 14 of the plaint wherein the respondents/plaintiffs have claimed as that they were in possession and enjoyment of the land measuring an extent of 1 acre 17 cents and they have also claimed right over the property. But, unfortunately, they have not filed the above suit for declaration to declare their title, instead they have filed the suit only for permanent injunction to restrain the revision petitioners from interfering with the peaceful possession and enjoyment of the suit property and also not to proceed with the construction.

21) From para No.13 of the plaint, it is revealed that the respondents/plaintiffs had made several requests with the Tamil Nadu Housing Board to reconvey the land in their favour and since the Housing Board had refused to consider their request to reconvey the land, they had filed a Writ Petition in W.P.No.32034 of 2007, seeking the relief of a writ of certiorarified Mandamus calling for the records of the first respondent therein, in letter No.7189/L.A(1)/07-4, dated 03.08.2007, for the property in relation to S.No.296/2 Mugappair village measuring 1 acre 17 cents and to quash the same and direct the 2nd respondent therein to reconvey the land in S.No.296/2 measuring 1 acre 17 cents to them.

22) The respondents/plaintiffs have also admitted that they had sought reconvey only in respect of 1 acre 17 cents in Survey No.296/2. According to the respondents, the Executive Engineer, Tamil Nadu Housing Board had executed a deed of reconveyance in favour of A.S.Dilippan represented by his power agent one Mr.D.Nandakumar in respect of 36 cents in Mugappair village comprised in Survey No.291/1 and 296/1 part and 2 part. They have also ascertained that in the reconveyance deed, it is clearly stated that an extent of 1 acre 1.84 cents is comprised in Survey No.289/1 and 291/1.

S.No.	Survey Nos.	Extent
1.	289/1	1.07 cents
2.	291/1	0.77 cents

23) It is also the case of the respondents/plaintiffs that it is specifically stated in the reconveyance deed that 36 cents alone was reconveyed. But, the Executive Engineer, Tamil Nadu Housing Board had inadvertently specified the survey numbers as 289/1 and 296/1 part and 296/1 part 296/2 part and therefore, the revision petitioners schemingly wanted to encroach their property. In this connection, Mr.R.Thirugnanam, learned counsel appearing for the petitioner has argued that in the plaint in paragraph No.13 itself, the respondents/plaintiffs had admitted that they were not in possession of the suit property and that was why they had made a request to the Tamil Nadu Housing Board to reconvey the land but their request was negatived. They had also filed their Writ Petition in W.P.No.32034 of 2007, for quashing the orders passed by the Housing Board dated 03.08.2007. On account of this reason, Mr.Thirugnanam, learned counsel has argued that when the averments of plaint itself reveals that the respondents/plaintiffs were not at all in possession of the suit property at the time of filing the suit, the suit for bare injunction is not at all maintainable as the plaint did not disclose a cause of action to maintain the suit as against the revision petitioners.

24) This Court had perused paragraph No.19 i.e., cause of action paragraph. In Paragraph No.16, the respondents/plaintiffs have stated that the

revision petitioners were proceeding with the construction of compound wall in 36 cents from 13th March 2009. Admittedly, this suit was filed only on 11.01.2010 since they have stated that the revision petitioners were proceeding with the construction on and from 13th March 2009, it is, thus made clear that the respondents/plaintiffs have not taken immediate steps to prevent them from making such construction, if they really were possession of the suit property at the time of alleged construction made by the revision petitioners. The above facts would unerringly go to show that the respondents/plaintiffs were not in possession of the property at the time of filing the suit. This Court is also able to understand from the cause of action paragraph 19, that the Tamil Nadu Housing Board had rejected their claim for reconveyance on 30th November 2007. When such being the case, this Court finds that the suit itself is not maintainable and liable to be rejected as there is no cause of action to maintain the suit.

25) In the result, this Revision Petition is allowed. The impugned order dated 09.09.2011 is set aside and the petition in I.A.No.1167 of 2009 is allowed and in consequence there of the plaint in the suit in O.S.No.98 of 1999 pending on the file of the District Munsif, Ambattur is rejected. There is no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

17.10.2016

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Index:Yes/No
Internet:Yes

To

The District Munsif Court, Ambattur

T.MATHIVANAN,J.,

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