

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) Nos.123 and 131 of 2016

and

C.M.P.Nos.678 and 684 of 2016

Dilip Kumar Mehta ... Petitioner in CRP.No.123 of 2016

Kala Mehta ... Petitioner in CRP.No.124 of 2016

vs.

P.Karthik Sairam ... Respondents in both CRPs

Prayer in C.R.P.Nos.123 and 131 of 2016

Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 16.03.2015 passed in I.A.Nos.8681 and 8680 of 2014 respectively in O.S.No.4082 of 2013 by XV Assistant City Civil Court, Chennai dismissing the same, seeking to set aside the same.

For Petitioner : Mr.L.OM.Magesh
in CRP.No.123 of 2016

For Petitioner : Mr.V.Haribabu
in CRP.No.131 of 2016

For Respondent
in both CRPs : Mr.G.Appavu

COMMON ORDER

These two Civil Revision Petitions have arisen out of two separate orders dated 16.03.2015 passed by the learned trial Judge, namely, the XV Assistant Judge, City Civil Court, Chennai made in I.A.Nos.8680 of 2014 and 8681 of 2014 in O.S.No.4082 of 2013 on the file of the said Court.

2. The respondent herein, as plaintiff, filed the above said suit for a declaration that the sale deeds dated 14.01.1996 registered as document Nos.3565 of 1966 and 3566 of 1996 in favour of the petitioners in the revision petitions / defendants 1 and 2 in the original suit are not valid and are not binding on him or his share in the suit property and for a permanent injunction restraining the revision petitioners/defendants from alienating or encumbering the plaintiff's alleged share in the suit property. On service of summons, the defendants, who are wife and husband, entered appearance and filed separate applications under Order VII Rule 11 C.P.C praying for the rejection of the plaint on the ground that the suit, even as per the plaint averments is vexatious and no cause of action has been revealed in the averments, made in the plaint. The application filed by Kala Mehta, the petitioner in C.R.P.No.131 of 2016, was taken on file

as I.A.No.8680 of 2014, whereas the application filed by Dilip Kumar Mehta, the petitioner in C.R.P.No.123 of 2016/second defendant, was taken on file as I.A.No.8681 of 2014. After hearing, by separate similar orders dated 16.03.2015, the learned trial Judge dismissed both the applications. As against the order of dismissal I.A.No.8680 of 2014, Kala Mehta, the first defendant has preferred C.R.P.No.131 of 2016 and Dilip Kumar Mehta, the second defendant has preferred C.R.P.No.123 of 2015 as against the order made in I.A.No.8681 of 2014.

3. The respondent has entered appearance and Mr.G.Appavu, learned Advocate is representing the respondent in both the Civil Revision Petitions. Since notice before admission was served on the respondent and the respondent has entered appearance and since the question involved in the Civil Revision Petitions is simple, this Court deems it appropriate to hear the arguments on merits and dispose of the Civil Revision Petitions at the time of admission itself. The learned counsel appearing for the petitioners and the learned counsel appearing for the respondent are also prepared for getting an order on merit at the time of admission itself and they have advanced their arguments on merits.

4. This Court heard arguments advanced on both sides, perused the copies of impugned orders and copies of other papers produced in the form of typed-set of papers and paid its anxious consideration to the arguments as well as the documents referred above.

5. Upon such consideration, this Court is of the view that the orders of the trial Court dismissing the application I.A.Nos.8680 of 2014 and 8681 of 2014 cannot stand the scrutiny of the Court and they are liable to be set aside. The reasons are as follows.

6. It is the admitted case of the respondent herein / plaintiff that the suit property was the self acquisition of his maternal grandfather late K.S.Thangavelu, who executed a settlement in favour of his wife Mohanambal, creating a life interest in the suit property for her without any right of alienation and giving the vested remainder absolutely to the legal heirs of Thangavelu and Mohanambal. Such settlement came to be made by virtue of a settlement deed dated 12.07.1965 registered as document No.1656 of 1965 in the office of the Sub Registrar, Purasawakkam, Chennai.

7. It is also the case of the plaintiff as revealed by the averments found in para 4 of the plaint that after Mohanambal, her children were entitled to the property absolutely. Having made such averments, the respondent / plaintiff contended in the plaint that his maternal uncle Raju, in collusion with the revision petitioners, cheated Sundari, the mother of the respondent herein and fraudulently obtained two sale deeds in favour of the revision petitioners herein which have been sought to be declared invalid and not binding on the plaintiffs, the respondent herein / plaintiff has not chosen to divulge the fact that Mohanammal died even prior to the sale deeds executed by Sundari in favour of the revision petitioners. He has not even furnished the particulars of the legal heirs of Mohanambal, who succeeded to the property on her death.

9. On the other hand, the revision petitioners have brought to the notice of the Court that Mohanambal died on 23.10.1991 leaving behind her two sons by names Raju and Gangadharan and one daughter by name Sundari; that the said Gangadharan died on 12.02.1995 without getting married and without having any issues and thus, his share devolved upon the other brother, namely Raju and sister Sundari and that thus Raju and Sundari became the absolute owners of the suit property. They have also brought to the notice of

the Court that both Raju and Sundari, being absolute owners of the suit property, conveyed the property in favour of the revision petitioners under the sale deeds, which are sought to be declared invalid and not binding on the plaintiff. The above said facts have not been disputed by the respondent herein and the learned counsel for the respondent also admits the correctness of the said facts. However, the respondent has chosen to file the suit without even spelling out the way in which he got a right to the suit property to challenge the sale deeds executed by his mother as invalid or not binding on him. It is an admitted fact that the mother of the respondent, namely, Sundari is very much alive. In suppression of all these facts and without showing how the respondent herein / plaintiff would derive title to the suit property, he has chosen to file the suit on the ground that a fraud was played upon his mother in 1996 and the sale deeds concerned in the suit came to be obtained. The suit came to be filed in the year 2013, namely, after 17 years, that too, when the person allegedly cheated (person on whom the alleged fraud was committed) is very much alive and is not legally incompetent to initiate judicial proceedings in her own name. The very attempt made by the respondent / plaintiff by filing the suit for the above said reliefs is obviously vexatious besides being an abuse of process of Court. A reading of the plaint will show that the plaint does not disclose a cause of action for the respondent

herein / plaintiff to file the suit for the relief sought for in the plaint. Order VII Rule 11 C.P.C. Sub Clause (a) mandates the Court to reject the plaint, if the plaint does not disclose a cause of action.

10. A reading of the plaint may even show that the suit has been filed for the purpose of vexation and as an abuse of process of Court suppressing material facts which may even justify the High Court to exercise its power of superintendence on the Subordinate Court to strike off such a plaint. As the prayer is not for striking off the plaint on the ground of vexation and abuse of process of Court and since the prayer has been made under Order VII Rule 11 C.P.C for the rejection of the plaint, this Court confines its consideration to the question whether the plaint discloses any cause of action or not.

11. As pointed out supra, the plaint averments do not disclose a cause of action for the respondent/plaintiff to file the suit for the relief sought for in the plaint. On that score alone, the applications filed by them should have been allowed and the plaint should have been rejected. The Court below committed an error in dismissing the applications filed by the revision petitioners. Hence, this Court comes to the conclusion that the revisions shall succeed.

P.R.SHIVAKUMAR.J

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12. Accordingly, both the revision petitions are allowed. The orders of the trial Court dated 16.03.2015 made in I.A.Nos.8680 of 2014 and 8681 of 2014 are set aside. Both the applications are allowed and the plaint in O.S.No.4082 of 2013 shall stand rejected. No costs. Consequently, the connected miscellaneous petition are closed.

08.03.2016

Index: Yes/No

Internet: yes/No

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To

The XV Assistant City Civil Court, Chennai

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and
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