

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD)No.404 of 2016

and

C.M.P.No.2168 of 2016

1.N.Jaganathan
S/o.Narayasamy Naidu

2.R.Raghava Balaji
S/o.Rajamani

3.Vichitra
D/o.Maruthan Chettiar

... Petitioners

Vs.

Muthusamy
S/o.Chinnasamy Gounder

... Respondent

Civil Revision Petition has been filed under Article 227 of the Constitution of India, seeking to strike off the plaint in O.S.No.358 of 2015 on the file of learned District Munsif, Pollachi.

For Petitioners : Mr.Mohamed Ismail

For Respondent : Mr.J.C.Durairaj

ORDER

By way of this revision, petitioners/defendants seek striking off of the suit in O.S.No.358 of 2015 on the file of learned District Munsif, Pollachi.

2. Heard learned counsel for petitioners and learned counsel for respondent.

3. Respondent/plaintiff has preferred O.S.No.358 of 2015 on the file of learned District Munsif, Pollachi, seeking relief of declaration i.e., sale deed dated 28.05.2015 executed in favour of third petitioner/third defendant by petitioners 1 and 2/defendants 1 and 2 as null and void and consequential relief of permanent injunction restraining petitioners/defendants from interfering with possession and enjoyment except under due process of law.

4. Learned counsel for petitioners submitted that this revision petition had been preferred under Article 227 of the Constitution of India since the suit preferred by respondent was a clear abuse of process of law. It was an attempt to usurp the property belonging to third petitioner/third defendant in spite of categorical findings of courts in earlier actions as also rejection of plaintiff's claim by the revenue department. Learned counsel submitted that the first petitioner purchased the suit property through a court auction sale in

E.P.No.289 of 1968 in O.S.No.797 of 1967 on the file of learned District Munsif, Pollachi, on 04.08.1969. First petitioner was put in possession through court proceedings dated 02.04.1974. He had obtained mutation of revenue records in his favour on 26.03.1980. The grand father of respondent/plaintiff had suffered a decree resulting in a court auction sale and purchase of property by first petitioner and his perfecting title thereto. Respondent/plaintiff had based his present action on a partition deed dated 03.11.1968 but a similar contention raised in O.S.No.47 of 1978 had been turned down under judgment dated 18.08.1978. The wrongful mutation of records in the name of respondent/plaintiff have been set right under order of the Revenue Divisional Officer, Pollachi, dated 27.02.2014 by registration of first petitioner's name in the revenue records. When such proceeding of Revenue Divisional Officer was pending, respondent/plaintiff and others had filed a suit in O.S.No.479 of 2013 on the file of learned District Munsif, Pollachi, seeking a direction against Revenue Divisional Officer not to effect any transfer. Such suit had been stayed under orders of this Court in C.R.P.(PD) No.3292 of 2015 dated 11.09.2015. The suit in O.S.No.358 of 2015 was barred by *res judicata*, the respondent/plaintiff cannot plead adverse possession from 1966 onwards since his grand father had been dispossessed of the property under due process of law and first petitioner was in possession and enjoyment from as early as on 02.04.1974. Being so in possession and enjoyment, first petitioner had effected sale of property in

favour of third petitioner, who was in enjoyment. In the said circumstances, this Court ought to have exercised powers under Article 227 of the Constitution of India and strike off the suit in O.S.No.358 of 2015 on the file of learned District Munsif, Pollachi.

5. A perusal of the plaint in O.S.No.358 of 2015 informs the contention of respondent/plaintiff to be that the claim of purchase of property through auction sale in execution proceedings was false, that in various proceedings, the first petitioner had never appeared in person and of the respondent/plaintiff doubting the very existence of first defendant, that a sale deed had been executed in favour of third defendant by the second defendant and both defendants 2 and 3 were causing hindrances to possession and enjoyment of the property and though a sale certificate in favour of the first petitioner is alleged, respondent/plaintiff never had parted with possession. As against the contention of petitioners that the suit wherein the respondent/plaintiff had sought a direction to the Revenue Divisional Officer against effecting mutation of revenue records had been stayed by this Court under orders dated 11.09.2015 in C.R.P.(PD) No.3292 of 2015, it is the contention of respondent/plaintiff that such relief had been claimed by him in O.S.No.479 of 2013, on the file of learned District Munsif, Pollachi, that such suit was pending and therein, petitioners 1 and 2/defendants 1 and 2 filed I.A.No.1343 of 2014 seeking rejection of the plaint

and such application had been dismissed on 23.06.2015. Respondent/plaintiff has informed that in such application, petitioners 1 and 2/defendants 1 and 2 claimed that the plaintiff's father was their farm servant and the same is to be read as an indirect admission of the suit property being in possession of the plaintiff and his predecessors. Paragraph No.12 of the plaint reads as follows:

“(12) As submitted above, the plaintiff and his predecessors in title are in continuous possession and enjoyment of the suit properties openly without any hindrance by anybody including the alleged auction purchaser for more than the statutory period from 1966 onwards and to the knowledge of everybody and thereby acquired the right by adverse possession. The alleged auction purchaser though had any right is lost since he never came to the suit property or not even attempted to exercise his alleged right if any. Hence the plaintiffs become the absolute owners of the suit lands and except the plaintiff unlawfully got any right, title or interest whatsoever over suit property. Since some clouds is casted upon the property of the plaintiffs they have been forward with the suit for their reliefs. The plaintiffs are herewith enclosing their documents to show their continuous possession for their enjoyment for all these days. Hence the suit.”

6. In the typed set of papers, this Court finds the counter filed by respondent/plaintiff and others in I.A.No.1343 of 2014 seeking rejection of the plaint in O.S.No.479 of 2013. Therein, it is contended that the auction purchaser Jeganathan had died even in the year 2001 and was being

impersonated by first petitioner. Respondent/plaintiff has filed a list of documents which includes series of kist receipts, electricity bills and adangals which might be indicative of possession. Respondent/plaintiff must be afforded an opportunity to prove his case. While petitioners' contention is of an earlier action in O.S.No.47 of 1978 (name of Court not informed) based on the partition deed dated 03.11.1968 having been dismissed under judgment dated 18.08.1978, the petitioners have not chosen to produce the same. Respondent/plaintiff necessarily would have to be permitted to plead and prove his case.

The Civil Revision Petition is dismissed. No costs. Connected miscellaneous petition is closed.

24.08.2016

Index: Yes/No
Internet: Yes
gm

To
The District Munsif,
Pollachi.

C.T.SELVAM, J

C.R.P.(PD) No.404 of 2016

24.08.2016