

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.2826 of 2012

and

M.P.Nos.1 and 2 of 2012

1.Sengeni Ammal (Deceased)

2.Mohan

3.Devaraj

4.Sampath

.. Petitioners

(P2 to P4 impleased as LR's of the deceased
petitioner vide order dated 24.11.2015
in M.P.No.1 of 2015)

Vs

1.C.Yeshwant Narayanan

2.C.E.Sathyanarayana Reddy

3.N.Devichithra

4.M/s.Mithra Home Makers Private Limited,
Rep. by its Director Mrs.Sujatha Moorthy,
residing at No.602, Sruthi Block,
Chithra Avenue,
9, Choolaimedu High Road, Chennai-94.

5.M/s.Eagle Realty Foundations Private Limited,
No.35, M.S.Koil Street,
Royapuram, Chennai - 13.

6.The Sub Registrar,
Thiruporur,
Kancheepuram District.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 26.04.2012 made in C.M.A.No.9 of 2011 passed in I.A.No.1328 of 2009 in O.S.No.479 of 2009 on the file of the District Munsif Court, Chengalpattu.

For Petitioner : Mr.P.Anbarasan
For Respondents : Mr.V.K.Vijayaraghavan (For R2)
No appearance (For R1, R4 to R6)

ORDER

This Civil Revision Petition has been filed challenging the impugned order passed in C.M.A.No.9 of 2011 dated 26.04.2012 by confirming the order passed in I.A.No.1328 of 2009 in O.S.No.479 of 2009 dismissing the application filed under Order 39 Rule 1 and 3 CPC for restraining the 6th defendant/6th respondent herein from in any way admitting, accepting or registering any document of sale, or mortgage or agreements or settlement in respect of the lands described in the suit schedule property came to be dismissed.

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

3. The plaintiff's husband T.Chinnappan was a freedom fighter. The suit property has been assigned in his favour. Subsequently it was cancelled in the

year 1981 and that has been confirmed on 06.12.1984. Against which, revision has been preferred where the Special commissioner for Land and Commissioner of Land Administration allowed the revision petition and re-assigned the said land to the plaintiff's husband and 4 others on compassionate ground as they were freedom fighters. But patta has not been issued. The plaintiff's husband Chinnappan died on 08.05.1987. The Tahsildar, Chengalpattu Taluk, Kancheepuram by his letter dated 23.04.1992 called upon the plaintiff's husband to appear before him on 30.07.1992 in order to assign the said land in favour of the plaintiff's husband as per G.O.Ms.No.871 dated 10.06.1991. Since the said Chinnappan died, patta was not issued. Therefore, the plaintiff approached this Court by filing a writ petition in W.P.No.8127 of 2009 and this Court by order dated 20.04.2009 directed the Tahsildar, Chengalpattu Taluk, Kancheepuram District to consider the plaintiff's representation and pass an appropriate order. At that time, she came to know that the defendants 1 and 2 claiming right over the property and attempting to interfere with her possession. Hence, she was constrained to file a suit for permanent injunction restraining the defendants 1 to 5, their men, agents, representatives or anybody on behalf of the defendants from in anyway interfering with the plaintiff's peaceful possession and enjoyment of the property and also restraining the 6th defendant from in any way admitting, accepting or registering any document of sale, or mortgage or agreements or settlement

etc. in respect of the lands described in the Schedule except that are submitted by the plaintiff and her sons. At the time of filing the suit, the plaintiff filed an application in I.A.No.1328 of 2009 restraining the 6th defendant, Sub Registrar not to entertain any deeds and also filed another application in I.A.No.1329 of 2009 restraining the defendants 1 to 5 from in anyway interfering with the plaintiff's peaceful possession and enjoyment of the property described in the Schedule. The Trial Court after hearing both sides, has dismissed both the applications. Aggrieved against that, the plaintiff preferred an appeal in C.M.A.No.9 of 2011. The First Appellate Court after hearing both sides, has dismissed the said appeal. Against which, the present Civil Revision Petition has been preferred.

4.Learned counsel for the petitioners submitted that both the Trial Court and the First Appellate Court has not considered the documents submitted by the plaintiff and has considered only the documents submitted by the defendants. Hence, he prayed for setting aside the impugned order passed by both the Trial Court and the First Appellate Court.

5.Learned counsel for the second respondent submitted that the plaintiff has not preferred any appeal against the injunction restraining the defendants 1 to 5 from interfering her peaceful possession and enjoyment of

the suit property. He further submitted that the petitioners cannot advanced any argument in this aspect since this revision has been filed only against the order of dismissal passed by the Trial Court in I.A.No.1328 of 2009 restraining the Sub Registrar from in any way admitting, accepting or registering any Document of sale, or Mortgage or Agreements or settlement, etc., in respect of the lands described in the Schedule except that are submitted by the plaintiff and her sons, which is a statutory bar. To substantiate his argument, he also relied upon the decision reported in ***AIR 2010 SC 1099 (Manish Goel vs. Rohini Goel)*** and prayed for dismissal of the revision petition.

6.Considered the rival submissions made by both sides and also perused the typed set of papers.

7.Even though arguments were advanced as if the revision petition was filed restraining the defendants 1 to 5 from interfering with the plaintiff's peaceful possession and enjoyment of the suit property, but on perusal of the records would show that the revision petition has been filed only against the 6th defendant from in anyway admitting, accepting or registering any Document of sale, or Mortgage or Agreements or settlement, etc., in respect of the lands described in the Schedule except that are submitted by the plaintiff and her sons. At this juncture, it is appropriate to consider the decision reported in

AIR 2010 SC 1099 (Manish Goel vs. Rohini Goel), wherein it was held that generally, no Court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions. The Courts are meant to enforce the rule of law and not pass the orders or directions which are contrary to what has been injected by law.

8. Considering the facts and circumstances of the case, I am of the view that the petitioners herein have not entitled to any relief now because they have to prove their title since the suit has been filed for permanent injunction and hence, they have to prove their possession, that too, legal possession and then only they are entitled to decree. Further, since the plaintiff has sought for permanent injunction directing the Sub Registrar not to admit, accept or register any Document of sale, or Mortgage or Agreements or settlement, etc., in respect of the lands described in the Schedule except that are submitted by the plaintiff and her sons, the petitioners have to prove their title to the property and that can be decided only at the time of trial. Hence, I do not find any reason to interfere with the impugned order passed by the First Appellate Court and the same is hereby confirmed. Consequently, the Civil Revision Petition deserves to be dismissed as devoid of merits.

9. In the result, the Civil Revision Petition is dismissed. Further, since the suit is of the year 2009, the Trial Court is directed to dispose of the suit in O.S.No.479 of 2009 within three months from the date of receipt of a copy of this order on day-to-day basis. No costs. Consequently, connected miscellaneous petition is closed.

08.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The District Munsif, Chengalpattu.

R.MALA. J.,

cse

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