

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.62 of 2012
and
M.P.No.1 of 2012**

1.Jeevarathinam Ammal

2.G.Chokkanathan

.. Petitioners

Vs.

1.V.Kannaia Naidu

2.G.Sattanathan

3.G.Selvanathan

4.G.Selvaganapathy

5.G.Prathapsekhar

6.Nagajothi

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair order and decretal of the learned Principal District Judge, Cuddalore, dismissing I.A.No.214 of 2009 in I.A.No.188 of 2006 in unnumbered CMA. of 2006 dated 29.06.2011.

For Petitioners : Mr.D.Baskar

For Respondents : No Appearance (for R2 to R4)
R1, 5 and 6 (Dismissed vide order
dated 11.09.2015)

ORDER

The 3rd parties in E.P.No.9 of 1999 in O.S.No.370 of 1993, on the file of the learned Subordinate Judge, Cuddalore, is the Civil Revision Petitioners before this Court, who filed E.A.No.318 of 2000 with the prayer as follows:

- i) Dismiss the E.P.No.9 of 1999;
- ii) Raising the attachment in respect of petitioners' properties mentioned in A schedule to this petition;
- iii) Order costs of the petition, and
- iv) Pass such other order as the court may think fit and proper.

2.It is the case of the petitioners is that the 1st petitioner was in possession and enjoyment of the property mentioned in 'A' schedule hereunder for the past 5 decades. The 1st petitioner also let the property for lease and enjoying the same as absolute property. The 2nd respondent has neither right or title over the property. The petitioner further states that when the 2nd respondent laid claim over the properties, who had been rented out by the 1st petitioner and

prevented the tenants from paying the rent to the 1st petitioner, the 1st petitioner has filed a suit in O.S.No.818 of 1988, on the file of the learned District Munsif Court, Cuddalore, for the relief of declaration and for permanent injunction. In that case, the tenants also gave evidence in the Court in support of the fact that they were residing in the respective aforesaid properties as tenants under the 1st petitioner, though the suit was dismissed. But later on, it was allowed in so far it related to the 1st petitioner's properties in A.S.No.55 of 1992, on the file of the learned Subordinate Court, Cuddalore, by virtue of a compromise decree was passed by the learned Judge. In terms of the compromise, the said Sattanathan, the 2nd respondent herein conceded title of the 1st petitioner with respect to the schedule mentioned properties and certain other properties held by the other tenants. In the compromise decree, there was a provision to the sons and daughters of the 1st petitioner, also mentioned, who was the petitioners 2 to 6 herein, having right to the property and joined in the petition.

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3.The petitioner further states that as per the decree in A.S.No.55 of 1992, the 2nd respondent has neither right nor title to the properties, due to the false claim of the 2nd respondent, the tenants

turned hostile and refused to pay the rent to the 1st petitioner and denied the title of the 1st petitioner. Therefore, again the 1st petitioner has filed another suit in O.S.No.780 of 1994 against some of the tenants for declaration and for recovery of possession, the said suit was decreed and appeal was pending in A.S.No.19 of 1999.

4. Apart from O.S.No.780 of 1994 the other petitioners were also filed 3 other suits either along with the 1st petitioner or severally. The other suits were, O.S.No.5 of 1996 by the 5th petitioner along with the 1st petitioner, O.S.No.377 of 1998 by the 4th petitioner, O.S.No.824 of 1995 by the 3rd petitioner and 1st petitioner and among the said suit in O.S.No.5 of 1996 and 824 of 1995 were disposed of.

5. The 1st petitioner also states that the 1st respondent has obtained money decree against the 2nd respondent in the suit and after the decree, the 1st petitioner has proceeded with the properties in Schedule 'B', since the 2nd respondent has not at all having any right or interest over the properties. Therefore, the petitioners' properties cannot be proceeded against and the 1st respondent has brought the 'A' schedule property described hereunder for sale.

6.The 1st petitioner also states that the 1st respondent has wrongly given the properties in the E.P. and is bringing up the properties for sale. In fact the 1st petitioner also given the schedule of property as though it is vacant site, but, there are several houses constructed by the various tenants. The 1st respondent has also deliberately given the properties of the petitioners and as vacant site, since the respondents has no right to bring the properties of the petitioner for sale. Therefore, due to the illegalities and irregularities the petitioners have filed the petition in E.A.No.318 of 2000 under Order XXI Rule 58 and Section 151 of CPC, for raising the attachment. In view of the same, they filed the above said application.

7.The 1st respondent has filed a counter by denying the allegations set out in the petition. The enjoyment and possession of the 1st petitioner for the past 5 decades was absolutely false and incorrect. The 1st respondent also states that he let out the property on lease in favour of the 3rd parties are also false, since the petitioners have no vested of right, title or interest over the property, the 2nd respondent has got the property under a partition deed dated 05.11.1978. The 2nd respondent was allotted the suit property, under the partition deed. The suit property has been in the possession and

enjoyment of the 2nd respondent, the 2nd respondent is the absolute owner of the suit property. Because the 2nd respondent got the property dated 05.11.1978 and the suit schedule of property was allotted as per the partition deed. The suit property was in absolute possession and enjoyment of the 2nd respondent and the 2nd respondent's title to the suit property has been upheld in O.S.No.45 of 1985, on the file of the learned Subordinate Judge, Cuddalore.

8.It is admitted fact that the 1st petitioner has filed the suit in O.S.No.818 of 1988, on the file of the learned District Munsif Court, Cuddalore, and the 2nd respondent contested the suit and questioned the title of the plaintiff in that suit. The suit was rightly dismissed for the reason that the 1st petitioner has not proved her title to the suit property. Therefore, the right of the 1st petitioner over the suit property is declared has already been decided by the competent Court on merits. As per the above dismissal of the property, an appeal has been filed against the judgment and decree in O.S.No.818 of 1988 and it is absolutely false and incorrect, the 2nd respondent has conceded the title of the 1st petitioner, the compromise effected in A.S.No.5 of 1992 is nothing, but a collusive decree only with a malafide intention to defeat the 1st respondent's decree amount. The compromise decree

appears to have been passed long after the attachment of the property. Though the suit property was attached on 28.07.1993, whereas the compromise decree was passed on 09.11.1993. Only with a tactics to delay the decree amount in favour of the 1st respondent, the compromise decree was entered by them. Therefore, the 1st respondent sought for dismissal of the E.A.No.318 of 2000.

9.Though the said petition was dismissed by the learned Subordinate Judge, Cuddalore, which was filed by the petitioners under Order XXI Rule 58 and Section 151 of CPC. Against which the petitioners have filed unnumbered CMA. of 2006 along with the condone delay petition in filing the appeal.

10.In the said I.A.No.188 of 2006 in unnumbered CMA was dismissed for default on 01.07.2009 for restore the said I.A., the petitioners were filed I.A.No.214 of 2009. In the affidavit, the 1st petitioner Tmt.Jeevarathinam ammal has filed an affidavit, she alone looking after the case on behalf of all the petitioners and she alone was examined as witness before the lower Court in the petition. The 1st petitioner was met with an accident in the month of July 2005 and due to an accident, she was not in a position to go out and even now, she

has not able to go out, since the 2nd petitioner alone is looking after the 1st petitioner and he also not able to go. The 1st petitioner also states that they have filed I.A.No.266 of 2008 to record her evidence in I.A.No.188 of 2006, through the Advocate Commissioner and it was posted on 01.07.2009 for enquiry, since no instruction was received from the petitioner by the counsel and hence the petition was dismissed for default on 01.07.2009.

11. On know about the dismissal of I.A., this petitioner has filed the I.A.No.214 of 2009 for restore the I.A.No.188 of 2006 which was dismissed for default on 01.07.2009 which was taken on file and to dispose on merits.

12. A counter affidavit has been filed by the 1st respondent and denied each and every allegations set out in the petition. Considering both side arguments, the learned Judge has dismissed the applications in I.A.Nos.214, 215 and 216 of 2008 in I.A.No.188 of 2006 in unnumbered CMA by giving liberty by stating that if the petitioners are aggrieved they can claim their right as prescribed under the Provision of Order 21 Rule 58(5) CPC, the learned District Judge, Cuddalore, was dismissed the CMA with the liberty. Challenging the said order, the

present application has been filed.

13.I heard Mr.D.Baskar, learned counsel appearing for the petitioners and there is no representation on behalf of the respondents 2, 3 and 4 and the civil revision petition was already dismissed by an order dated 11.09.2015 in respect of the respondents 1, 5 and 6 and perused the records.

14.Admittedly, the petitioners were filed the petition in E.A.No.318 of 2000 under Order XXI Rule 58 and Section 151 of CPC, the said petition was dismissed by the learned Judge. Challenging the said order, the petitioners were filed the unnumbered CMA before the learned District Judge, Cuddalore along with the condone delay application in I.A.No.188 of 2006. The said petition was dismissed for default on 01.07.2009 due to the non appearance of the petitioners.

15.For dismissal of the application in I.A.No.188 of 2006 for default, these petitioners were filed I.A.No.214 of 2009 for restoring the I.A.No.188 of 2006 which was also dismissed for default on 01.07.2009. Once the petition filed under Order XXI Rule 58(5) of CPC was dismissed by the learned Subordinate Judge, they have no right to

file one another application for the very same prayer under the provision Order XXI Rule 58(5) of CPC has not been proper.

16.Once the petitioners were filed an appeal in unnumbered CMA, they have every right to proceed the said appeal in unnumbered CMA and the same should be disposed only on merits. Therefore, the very order of dismiss for default on 01.07.2009 should be restored and the I.A.No.188 of 2006 should be decided on merits.

17.For giving one more opportunity to the petitioners in the interest of justice, it is just and necessary, this Court warranting interference in the order passed in I.A.No.214 of 2009, dated 29.06.2011, on the file of the learned Principal District Judge, Cuddalore, and accordingly, the same is liable to be set aside and I.A.No.188 of 2006 is liable to be restored on file and dispose on merits.

18.In the result:

(a) this Civil Revision Petition is allowed by setting aside the order in I.A.No.214 of 2009 dated 29.06.2011, on the file of the learned Principal District Judge,

Cuddalore;

(b) the learned Principal District Judge, Cuddalore, is directed to restore the I.A.No.188 of 2006 on its file and dispose the same on merits within a period of two months from the date of receipt of a copy of this order, without giving any adjournment to either parties. Both the parties are hereby directed to approach before the learned Principal District Judge, Cuddalore;

(c) on passing the orders in I.A.No.188 of 2006, the learned Principal District Judge, Cuddalore, is directed to dispose the unnumbered CMA on merits thereafter. No costs. Consequently, connected miscellaneous petition is closed.

20.12.2016

Note: Issue order copy on 21.12.2017

Index: Yes/No

Internet: Yes/No

vs

To

The Principal District Judge,
Cuddalore.

M.V.MURALIDARAN, J.

VS



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