

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.406 of 2017

and

C.M.P.Nos.1860 and 1861 of 2017

1. Loordhu Mary
2. Suseela
3. Mary Stella
4. Yesurani
5. Mariya Selvam

.. Petitioners

Vs.

Selvambal

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 03.06.2016 in C.M.A.No.4 of 2015 on the file of the Principal Sub-Court, Tiruvannamalai, against the fair and final order dated 29.11.2012 made in I.A.No.834 of 2011 in O.S.No.317 of 2011 on the file of the Principal District Munsif Court, Tiruvannamalai.

For petitioners : Mr.B.Jawahar

ORDER

The revision is filed against the order refusing to grant injunction in favour of the plaintiffs who are the revision petitioners herein. The suit is

filed for injunction based on adverse possession. The case of the plaintiffs is that the suit property belongs to the first petitioners' grand-father Chinnappan and the said Chinnappan effected an oral partition among himself and his son in respect of the self-acquired property and the petition mentioned property was allotted to Lazer, the father of the first petitioner and he has been in possession and enjoyment of the same without anybody's interference. The other plaintiffs are the legal heirs of the said Lazar. It is stated that during his lifetime, the said Lazar mortgaged the suit property in favour of the respondent. The respondent is the wife of the first petitioner's husband. The petitioners claim that they have been in possession from 18.08.1980, which is the date of the sale deed. In the said sale deed, there is a recital that the earlier mortgage was discharged. However, the plaintiffs claim that the possession is continuous with them and therefore, they have sought for injunction.

2. The respondent has denied all the averments with regard to the above mentioned property in the plaint as well as in the application. According to the respondent, the mortgage was not discharged and therefore, the sale deed was executed on 18.08.1980 in favour of the respondent, and the possession was also given on the same day. By virtue of the sale deed, the respondent claims to be in possession of the suit property.

3. After considering the documents and the arguments of both sides, the Courts below have correctly held that the plaintiffs are not in possession. The respondent had also marked the sale deed and also discharge receipt and other documents like patta book, kist receipts, Chitta and A-Register extract, in the name of Selvambal, who is the respondent herein. The very claim of the petitioners is by way of adverse possession. The trial Court has held that the petitioners have not made out prima-facie case for grant of any relief in their favour and hence, dismissed the application.

4. The appellate Court has given a finding that the injunction cannot be granted against true owner, and in view of the sale deed executed by the father and the property has been transferred in the name of the respondent, who is admittedly the wife of the first petitioner's husband, it is not possible to seek injunction against the true owner. Hence, the appellate Court also concurred with the findings of the trial Court and dismissed the appeal.

5. In view of the above facts, I see no reason to interfere with the concurrent findings of the Courts below. Considering the age of the suit which is of the year 2011, the learned Principal District Munsif, Tiruvannamalai, is directed to dispose of the suit in O.S.No.317 of 2011 before 30.06.2017.

6. With the above observations and direction, the Civil Revision Petition is disposed of. No costs. Consequently, C.M.Ps. are closed.

13.02.2017

CS

Copy to

1. The Principal Sub-Judge, Tiruvannamalai.
2. The Principal District Munsif, Tiruvannamalai.

PUSHPA SATHYANARAYANA, J

CS

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