

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.219 of 2015
and
M.P.No.1 of 2015

J.Govindhaswamy @ Seenu ... Petitioner
vs.

1. R.Umraw Bai
2. R.Padam Kumar ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 11.09.2014 passed by the learned II Additional District and Sessions Judge, City Civil Court, Chennai in C.M.A.No.67 of 2014 confirming the order dated 03.02.2014 passed by the learned XI Assistant Judge, City Civil Court, Chennai in I.A.No.9170 of 2013 in O.S.No.3611 of 2013

For Petitioner : Mr.S.Ambigapathi

For Respondents : Mr.B.Gopalakrishnan

ORDER

The plaintiff, who is aggrieved by the order refusing to grant injunction by both the Courts below, has filed this revision.

2. The suit is one filed by the plaintiff for grant of permanent injunction restraining the defendants 1 and 2 from disturbing his possession and also for declaring that the sale deed dated 26.04.2013 in favour of defendants 1 and 2 as null and void.

3. It is the case of the plaintiff that his father had executed a registered Will dated 7.9.1992 in favour of his three sons including the plaintiff and he died on 10.07.2000. It is now stated that steps are being taken to probate the Will before this Court. But the other two brothers, who are also the beneficiaries under the Will are not co-operating in the process. While so, the other two brothers have sold the property in favour of the defendants herein on 26.04.2013. As the defendants are trying to disturb the possession of the plaintiff, the suit has been filed. Along with the suit, an application in I.A.No.9170 of 2013 was also filed for grant of interim injunction, which was dismissed. It is also stated that an application for appointment of Commissioner has also been filed and it is pending for enquiry. Aggrieved by the same, the plaintiff filed an appeal in CMA No.67 of 2014 and the same also was dismissed by the Appellate court, confirming the order passed by the trial court. Challenging the same,

the present revision is filed.

4. Heard both sides and perused the records.

5. It is contended by the learned counsel for the revision petitioner/plaintiff that since the properties are in tact and not partitioned between the co-owners he should be granted an injunction. But, however on a perusal of Ex.R1, it is seen that the suit property was already partitioned between the brothers and possession also has been taken over by each of the brothers. The defendants have also in their written statement had admitted the oral partition between the parties and the family arrangement. The appellate court has also found that the plaintiff had suppressed the earlier suits and he has also got 1/3 share in the suit property and he cannot have an order of injunction. Further, it has been categorically found by both the courts below that the plaintiff/revision petitioner has not made out a *prima facie* case and the balance of convenience is also not in favour of the plaintiff as he has not come to Court with clean hands.

6. In view of the conclusion arrived at by the Courts below, I do not find any infirmity with the orders passed by the Courts below. However, considering the facts and circumstances of the case, the

parties are directed to maintain status quo, as on date, till the disposal of the suit in O.S.No.3611 of 2013 pending on the file of the learned XI Assistant Judge, City Civil Court, Chennai, as the plaintiff is seeking injunction against the co-owners of 2/3 shares, who have alienated their shares to the defendants. So far as the factum of possession is concerned, unless the parties go in for trial, it will be very difficult to adjudicate at this stage as the defendants are only third party purchasers from the other sharers.

7. As the dispute raised in the suit lies within a narrow campus and also taking into account the fact that the suit is of the year 2013, the learned trial judge is directed to dispose of the suit within a period of three months and not later than 31.03.2017.

8. With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

02.01.2017

vj2

Index: Yes/No
Internet: Yes

To

1. The II Additional District and Sessions Judge,
City Civil Court, Chennai.
2. The XI Assitant Judge, City Civil Court, Chennai.

PUSHPA SATHYANARAYANA.J

vj2

C.R.P.PD.No.219 of 2015

02.01.2017

<http://www.judis.nic.in>