

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2017

CORAM

THE HONOURABLE MR.JUSTICE Dr.P.DEVADASS

Civil Revision Petition (PD) No.3489 & 3490 of 2013

and

M.P.No.1 of 2013 in CRP No.3489 of 2013

Sekar

... Petitioner in both CRPs.

vs

1.Vilasapathy

2.Viji @ Vijayakumari

3.Kavitha

4.Kanimozhi

5.Arulmozhi

6.Elakiya

7.Azhagesan

8.Manimaran

9.Ravi

... Respondents in both CRPs.

..9th respondent in CRP.3490 of 2013

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 14.08.2013 made in I.A.Nos.406 & 377 of 2013 respectively in O.S.No.110 of 2012 on the file of the District Munsif Court, Sirkali.

For Petitioner : Mr.S.Sounthar

For Respondents : Mr.A.Muthukumar

Common Order

Since these civil revision petitions arises out of the common order dated 14.08.2013 in I.A.Nos.406 & 377 of 2013 made in O.S.No.110 of 2012 on the file of the learned District Munsif, Sirkali, the said petitions are heard together and are being disposed of by this common order.

2.One Periasamy had three sons namely, Sekhar, Rajendran and Govindarasu. Sekhar is the plaintiff. Govindarasu is no more. His wife is the first defendant. Their children are defendants 2 to 6. Defendants 7 and 8 are kith and kin of defendants 1 to 6. The 9th defendant is a friend of the other defendants.

3.In the suit, plaintiff sought for injunction. To show his legal possession incidentally he had mentioned about an earlier partition and registration of the same. It was of the year 1981.

4.The defendants filed written statement resisting the suit. Issues were framed. Plaintiff's evidence was over. The defendants commenced their evidence. At the instance of the first defendant a document relating to a Panchayat decision has been sent for from the panchayat. This document has

been produced. The defendants filed I.A.No.406 of 2013 to mark the said document. The plaintiff filed I.A.No.377 of 2013, to reject the said document.

5.The plaintiff objected to mark the said document since it results in transfer of a right in immovable property of the value of Rs.100/- upwards, it requires compulsory registration under Section 17 of the Indian Registration Act and since it has not been registered, it has been caught by the vice of Section 49 of the said Act and also there is non payment of stamp duty.

6.It has been replied to by the defendants that it is only a Panchayat's resolution and under which the defendants are not enforcing any right. It is only a piece of evidence produced to substantiate their version of possession of the property and thus the document does not require registration nor it requires payment of stamp duty.

7.The trial Court overruled the objections of the plaintiff and sustained the stand of the defendants as to the contentions relating to registration and payment of stamp duty. However, the court had left open the other questions and gave liberty to the plaintiff to raise them at the appropriate stage of the suit.

8.The learned counsel for the revision petitioner/plaintiff reiterated the very same objections, which were raised before the trial court. He would also submit that a court cannot be misled by the title or heading of a document. The substance of the document alone is the test. The said document evidences a family arrangement and it has been reduced into writing and it results in transfer of a right in an immovable property inviting application of Sections 17 and 49 of the Indian Registration Act and also Section 35 of the Indian Stamp Act.

9.In this connection, the learned counsel for the revision petitioner also cited **A.C.Lakshmipathy and another Vs. A.M.Chakrapani Reddiar and 5 others (2001 (1) CTC 112)**.

10.The learned counsel for the respondents/defendants also reiterated the very same contentions which were placed before the trial court. He also stressed that it is a piece of record, which has been maintained in the Panchayat office. It has been produced to demonstrate their version of the case. No question of adjudication of any property right, no question of registration, no question of payment of stamp duty arises. He also submitted that the plaintiff was not deprived of any further opportunity. Still he can raise certain permitted objections at the appropriate stage of the suit.

11.I have anxiously considered the rival submissions, perused the impugned order, the materials on record and the decision cited.

12.The suit is for bare injunction. Plaintiff wants the discretionary relief of injunction. He must so that he is in possession of the suit property on the date of the suit. That alone is not sufficient. He must also show that his such possession is a legal possession. To establish this, he speaks about a partition which had already taken place and the same has been registered.

13.To cut the case of the plaintiff, the defendants projects a document. However, neither the said document nor the partition deed of the plaintiff does speaks about the suit property.

14.Adjudication of title to property will not arise because it is not a suit on title. Of course as stated already, the plaintiff must show the legal character of his alleged possession. We have dealianated the scope of the suit.

15.In this back drop of the matter, the defendants are bound to establish their version of the case as pleaded in the written statement. They have a counter version as to the possession pleaded by the plaintiff.

16. In this connection, the defendant mentions about a decision arrived at between the parties in the presence of Panchayat members, which has been recorded. It is like a minutes. This minutes has been maintained in the office of the Panchayat and that has been brought before the court.

17. The decision cited by the learned counsel for the revision petitioner relating to a family arrangement which was reduced into writing is not applicable to the facts of the case before us.

18. Plaintiff also contented that he is not a signatory to the said Panchayat decision. It is a matter to be decided by the trial court on appreciation of the evidence.

19. In the facts and circumstances, we concur with the view taken by the trial court on the nature and character of the said document. I do not want to disturb the liberty reserved for the plaintiff by the trial court. And the defendant is also not standing in his exercising the said liberty.

20. In this view of the matter, I have no occasion here to interfere with the order passed by the trial court.

21. In view of the foregoing, ordered as under:

(1) these revision petitions fail and are dismissed.

(2) the learned District Munsif, Sirkali, is directed to dispose of the suit in O.S.No.110 of 2012, within four months from the date of receipt of a copy of this order.

(3) On disposal of the suit, the trial court will submit its completion report to the Registrar (Judicial) of this Court.

(4) In the facts and circumstances, no order as to costs.

(5) Consequently, connected miscellaneous petition is closed.

13.04.2017

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Index:yes/no

Internet:yes

To

1. The Principal District Judge,
Nagapattinam.
2. The District Munsif,
Sirkali.

Copy to:

1. The Registrar Judicial.
2. The Assistant Registrar, (A.S),
High Court, Madras.

Dr.P.DEVADASS,J.

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