

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CRP (PD) No.1394 of 2018
and CMP.No.7425 of 2018

B.Prince

... Petitioner

-Vs-

1.Apostolic Christian Assembly
Rep by Pastor E.Chellakumar
S/o.M.D.Edwin
Plot No.165, VGF Selva Nagar
Survey No.317/1A, 1, Velachery
Chennai – 600 042.

2.S.Gnanadurai

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.12.2017 made in I.A.No.2826/2017 in O.S.No.6639/2013 on the file of the IV Assistant Judge, City Civil Court, Chennai.

ORDER

1.1.The revision petitioner is the first defendant in a suit in O.S.No.6639 of 2013 on the file of City Civil Court, Chennai, which the first respondent has laid for permanent injunction seeking to restrain the revision petitioner and the second respondent herein from interfering with its peaceful possession and enjoyment of the suit property.

1.2. The suit property itself is described as a plot of land measuring 443 sq.ft. of vacant land in Plot No.165, V.G.P.Selva Nagar, comprised in Survey No.317/1A 1 of Velacherry Village, Chennai. The revision petitioner/ first defendant has filed his written statement, wherein he contends that the said 443 sq.ft. of land, over which the plaintiff seeks to establish its title lies not in Plot No.165, but in Plot No.18 of Venus Colony.

1.3. The trial of the case has commenced and the plaintiff's witnesses has been fully cross-examined by the revision petitioner. In the course of the trial, the plaintiff had introduced certain unregistered document styled as "gift deed", whereunder he claims to have acquired right over 443 sq.ft. described as the suit property hereunder. This document was executed by the Power of Attorney of the vendor of the revision petitioner.

1.4. Contending that the plaintiff/first respondent herein cannot derive any title under an unregistered deed of gift, as it is contrary to the statutory requirements of Section 123 of the Transfer of Property Act along side Section 17(1) of the Registration Act, the revision petitioner/first defendant has filed I.A.No.2826 of 2017 for rejecting the plaint under Order VII Rule 11 of CPC. The first respondent herein/plaintiff has filed its counter contending essentially that in a suit for injunction, the Court may not go into the question of title and that the gift deed is a valid one.

1.5. The trial Court has rejected this application on the ground that none of the contentions put forward by the petitioner can be brought within the ambit of Order VII Rule 11 CPC., This is now in challenge.

2. The learned counsel for the petitioner/first defendant would argue that while in the the plaint, the suit property is described as a vacant plot of 443 sq.ft. in Plot No.165, V.G.P.Selva Nagar, in Survey No.317/1A 1 of Velacherry Village, Chennai, the plaintiff refers to plots gifted by adjacent owners under unregistered documents, that these documents were received in evidence and since the effect of the documents as received came into conflict with the schedule of the property, and since an unregistered document cannot be used for the purpose of upholding title to the property, the issue fell within the ambit of Order VII Rule 11(d) CPC. The trial Court however, appeared to have erred in holding that the issue as raised by the revision petitioner in I.A.No.2826 of 2017 will not fall within the scope of Order VII Rule 11 CPC.

3. Let the facts be restated. According to the revision petitioner, the plaintiff in a suit for bare injunction has given the schedule of property that runs contrary to what it seeks to prove in the trial. For taking a deviation from its stated case founded on the schedule of property, it relies on an unregistered gift deed, which *stricto sensu* cannot be termed as a document worthy of conveying any title to the plaintiff as concerning the property covered by it. Looking at the case from this angle, it may not even be

necessary to seek rejection of plaint. If at all any, there may be a case for appointing a Commissioner for identifying the suit property with reference to the survey field. Turning to the present revision, as indicated, this is not a situation where Order VII Rule 7 CPC will have a role to play.

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

16.04.2018

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Index : Yes /No

Speaking Order / Non-speaking Order

To:

The IV Assistant Judge
City Civil Court
Chennai.

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N.SESHASAYEE,J.,

ds



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