

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.No.387 of 2019

and

CMP.No.2658 of 2019

P.Santhalingam

.. Petitioner/1st Defendant

Vs

1.Palanisamy

2.S.Thamburaj

3.S.Rathinam

4.M.Lakshmi

5.M.Rama Prabha

6.M.Shanthi

7.K.Dharmalingam

.. Respondent/Plaintiffs

8.K.Ramasubramanian

9.Rajinikanth Ramasubramanian

10.Anusha Rajnikanth

11.I.Pavankumar

12.A.Murugesan

13.L.Mathiazhagan

14.The Sub-Registrar,

O/o. Rub-Registrar,

Ganapathy,

Coimbatore,

Having his office at Maniakarampalayam,

Coimbatore – 06.

..Respondents/Defendants

Nos.2 to 8

Civil Revision Petition filed under Article 227 of the Indian Constitution to pass an order of striking off the plaint filed in O.S.No.1415 of 2018 on the file of Learned Sub-Judge, Coimbatore.

For Petitioner : Mr.B.Nambi Selvan

ORDER

The above application is filed to strike off the plaint in O.S.No.1415 of 2018 on the file of the Sub-Ordinate Judge, Coimbatore, filed by the respondent herein against the petitioners and the Sub-Registrar, Ganapathy, Coimbatore. The plaint was instituted on the basis that the suit property measuring an extent of 5.48 acres of land and is situated at S.F.No.2/3B of Vilankurichi Village, Coimbatore Taluk. Out of the above extent, an extent of 1.10 acres, belonged to the first plaintiff as per the Sale Deed dated 30.09.1996, executed in his favour by Smt.Valliammal. The second and third plaintiffs own an extent of 2.48 acres of land as per a Sale deed dated 26.11.1997 and as per settlement deed dated 09.02.2017, the fifth plaintiff owns an extent of 0.25 acres of land in the above survey field and sixth plaintiff owns an another extent of 0.25 acres of land in the above survey field as per the settlement deeds dated 03.12.2012 executed by their mother, Smt.Lakshmi. The fourth defendant owns an extent of 0.45 acres of land in the above survey field as per the sale deed dated 27.11.1997. The

seventh defendant owns an extent of 0.95 acres of land in the above survey field as per a Sale deed dated 27.11.1997.

2. Therefore the plaintiffs are in a possession and enjoyment of their respective shares in the property. The plaintiff traced the title to the suit property to one smt. Subbammal W/o Karuppa gounder, who had sold this 5.48 acres of land to one Palaniappa Mudaliar under the sale deed dated 29.10.1960. Palaniappa Mudaliar and Subbammal have together sold an extent of 5.48 acres of land to one Sivagami ammal under the sale deed dated 19.08.1961. Thereafter Sivagami sold the property to one Chinniya gounder under a sale deed dated 19.10.1967 and Chinniya gounder, who owned the suit property plus other lands measuring an extent of 10.12 acres had executed a will dated 24.06.1971, bequeathing the property on his wife Valliammal, absolutely. It is from this Valliammal that the plaintiff have purchased the property. The above narration is sufficient for the disposal of the above Civil Revision Petition insofar as the tracing of title is concerned. Thereafter, the plaintiff would contend that they have been in possession and enjoyment of the suit property for over 22 years, the suit property has been sub-divided as S.F.No.2/3B1A, 2/3B2 and 2/3BC on the basis of possession and title. The plaintiff would submit there is no other property available than these properties. While so, they had obtain a computerized

Chitta in which the name of the first defendant was incorporated and on enquiry they have come to know that the incorporation had taken place on the basis of decree that the first defendant had obtained in O.S.No.286 of 2016, which was filed in collusion by the first defendant with his sister one Rathinam. The plaintiff would contend that the first defendant had no right or interest in the suit property and it is by reason of this decree, that the defendant managed to obtain an inclusion of name in another revenue record. Therefore, the suit has been filed for a declaration that the decree and judgment obtained in O.S.No.286 of 2016, on the file of the Hon'ble I Additional District Munsif, Coimbatore, is not binding on the plaintiff and has been obtained fraudulently.

3.The revision petitioner has filed the present revision petition under provisions of Article 227 of the constitution of India. The main ground raised by the petitioner in this revision petition is that the plaintiff traces his title under the settlement deed and that the suit O.S.No.285 of 2016, has been filed only for a declaration that the parent document has been misplaced or lost. The revision petitioner would further contend that no right or interest of the revision petitioner is going to be affected by the decree in O.S.No.285 of 2016.

4.Heard Mr.B.Nambi Selvan, learned counsel appearing for the petitioner.

5.From a reading of the grounds of revision it is clear that no grounds have been made out for striking off the plaint. The plaintiffs have come forward with a detailed cause of action alleging fraud having been played on the basis of a decree that has been obtained in O.S.No.286 of 2016, in respect of the settlement deed on the basis of which decree, the defendants are claiming title. The plaint contains sufficient cause of action and therefore, it cannot be struck off under the provisions of the Article 227 of the Constitution of India. The defendants raised in this revision can be incorporated in the written statement by the petitioner in the instant suit and to contest and raise all the grounds in the suit.

6.Hence, the Civil Revision Petition has no merits and the same is dismissed. No Costs. Consequently, connected miscellaneous petition is also dismissed.

04.02.2019

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To
The Learned Sub-Judge,
Coimbatore.

P.T.ASHA, J.
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