

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(P.D).No.550 of 2019

and

CMP.No.3650 of 2019

1. Kanthammal
2. Babu

... Petitioners

-VS-

V. Jothi

... Respondent

Prayer: Petition under Article 227 of the Constitution of India praying to set aside the decree and fair order in I.A.No.228 of 2018 in O.S.No.72 of 2013 dated 26.10.2018 passed by the learned District Munsif, Arakkonam, Vellore District by allowing the Civil Revision Petition.

For Petitioners : Mr. J.Shanmugasundara Babu

ORDER

WEB COPY

The above Civil Revision Petition is filed challenging the dismissal of an application filed by the defendants 5 and 6 in I.A.No.228 of 2018 in O.S.No.72 of 2013 by the District Munsif, Arakonam.

2. The facts in brief are as follows: The first respondent herein had filed a suit for permanent injunction restraining the defendants 1 to 3 from in any way granting electricity service connection in favour of 6th defendant or any other person in respect of the suit schedule property and for an injunction restraining the 4th defendant from issuing a tax receipt to defendants 5 and 6 in respect of the suit schedule property.

3. In the plaint, the plaintiff has clearly stated that the suit property belongs to her absolutely and that she had constructed an Asbestoss roofed shed in a portion of the suit schedule property. The husband of the 5th defendant and the father of the 6th defendant one Mr.Arjuna Mudali had created a document called sale deed in his favour by fabricating the same as if it was executed by the plaintiff. On the basis of this fabricated sale agreement, Mr.Arjuna Mudali had earlier filed a suit for specific performance and the suit is still pending. A detailed written statement had been filed in the suit wherein she has clearly stated that she did not execute any sale agreement. Since the defendants were attempting to create evidence showing possession of the suit property by obtaining the electricity service connection and by getting the tax receipt in their name, the suit had been filed.

4. In the written statement, the defendants had contended that their father was in possession and enjoyment of the property by raising crops in the land and the written statement has been filed on 7.01.2014, thereafter the parties had gone to trial. When the matter was posted for arguments, the 5th and 6th defendants have come forward with the impugned Petition. The affidavit filed in support of the Petition does not give any reason as to why the application was being moved at the stage of arguments. The respondent/plaintiff had objected to the said application and ultimately by an order 26.10.2018, the learned District Munsif, Arakonam was pleased to dismiss the said Application. Challenging the same, the revision petitioner is before this Court.

5. Heard the learned counsel for the petitioner. The suit has been filed for bare injunction as early as in the year 2013 and in January 2014 the 6th defendant filed the written statement, which has been adopted by the 5th defendant, wherein categorically it is stated they are in possession of the suit property. The entire suit relates to the issue of possession and enjoyment of the suit property. The revision petitioners/defendants as per their own affidavit, knew that the suit was posted for arguments and at that stage, the present application has been filed and the counsel would contend that it was

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only now that the documents had been received. This creates a doubt in the mind of this Court since if a person is in possession and enjoyment of the property, the documents ought to have been in his possession throughout. The learned Judge has rightly dismissed the application.

6. I do not find any infirmity in the order passed by the learned District Munsif, Arakkonam. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

21.03.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order

mrn

To
The District Munsif,
Arakkonam,
Vellore District.

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