

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.02.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.R.P.(PD).No.700 of 2019
and
C.M.P.No.4576 of 2019

K.Kalaiarasi ... Appellant/ Petitioner/ Appellant

-vs-

G.Venkatesalu ... Respondent/ Respondent/
Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 18.09.2018 passed in I.A.No.587 of 2014 in A.S.No.64 of 2011, by the II Additional District Judge, Tiruvallur at Poonamallee.

For Petitioner : M/S.B.Harikrishnan

ORDER

The above Civil Revision Petition is filed challenging the Order passed by the learned II Additional District Judge, Tiruvallur in I.A.No.587 of 2014 in A.S.No.64 of 2011, which was a review petition, that had been filed by the revision petitioner/plaintiff against the Judgment and Decree passed in A.S.No.64 of 2011.

2.The brief facts that which are necessary for the disposing of the above Civil Revision Petition are as follows:

2.1.The revision Petitioner/Plaintiff had filed a suit in O.S.No.215 of 2010 on the file of the learned Subordinate Judge, Poonamallee for declaration of title to the suit property and for consequential Injunction. She would contend that she is the owner of the suit property under a Sale Deed dated 01.09.1993 from one S.Parameswara Iyer, who is the original owner of the property. He had sold the same to one G.Chengalvaraya Naidu under a Sale Deed dated 25.07.1978, who in turn had sold the same to one S.Mohan vide registered Sale Deed dated 12.07.1982. The said Mohan demolished the superstructure and thereafter, sold the vacant site to the plaintiff on 01.09.1993.

2.2.The plaintiff would contend that she had filed a civil suit under O.S.No.382 of 2000 on the file of the learned District Munsif, Poonthamallee for a permanent injunction and other consequential reliefs. The suit was decreed in favour of the plaintiff. The plaintiff had put up a pucca construction in the suit property in the year 2003. On 04.07.2018, the defendants had attempted to enter into the suit property. Therefore, the present suit is filed for declaration. The suit is resisted by the defendants

by contending that the property belonged to their father G.Chengalvaraya Naidu and as their father was leading a wayward life, he sold the property to one Mohan. Therefore, the defendant represented by his mother as guardian has filed a suit for partition and separate possession of his due share in O.S.No.475 of 1998. In the said suit, a preliminary decree was passed and thereafter, a final decree was also passed and EP 52/2007 was filed to take possession of the vacant site.

2.3. Therefore, the defendant contended that the plaintiff is in illegal possession of the said property and only after a detailed enquiry, the suit in O.S.No.215 of 2011 was dismissed against which, A.S.No.64 of 2011 were filed by the plaintiffs. The said appeal also ended in dismissal, by Judgment and Decree dated 7/11/2013.

2.4. Challenging this Judgment, the revision petitioner before this Court had filed the review application in I.A.No.587 of 2014 and the said petition was originally filed with a delay of 111 days which was later on condoned. On condition of the delay the review petition was numbered as I.A.No.587 of 2014.

2.5. The main ground on which the review petition has been filed is on the ground that the suit in O.S.No.475 of 1998 was a

belated one and has filed the same 15 years after, property was sold infavour of the said S. Mohan and that the Sale Deed ought to have been challenged. The other grounds on which challenge was made that the plaintiff in O.S.No.475 of 1988 ought to have filed a suit seeking declaration of the Sale Deed against S.Mohan as null and void; the court below had not considered the fact that the revision petitioner was in continuous possession for the property over 20 years.

2.6.The learned II Additional District Judge, Thiruvallur at Poonammalle, dismissed the said review application by order dated 18.09.2018 by holding that the review does not conform to the provisions of Order 47 Rule 1 wherein no discovery of new and important matter or evidence after exercise of due diligence had occurred within the knowledge of the petitioner when the decree was passed or Order made or on account of some mistake or error apparent on the face of the record. Challenging this order the petitioner is before this Court.

3.Heard Mr.B.Harikrishnan, learned counsel, appearing on behalf of the revision petitioner. He would contend that the error is so apparent in asmuch as the judgment in O.S.No.475 of 1998, was not one that conforms to the provisions of Section2(9)r/w

Order 20 Rule 5 of the Code of Civil Procedure and therefore, the Courts below have committed a grave error in passing the order. This court is unable to accept this arguments since this is only an error of Judgment and this is the point that has been already canvassed by the revision petitioner before the First Appellate Court and the Court has dismissed the said arguments and held that the said decree is binding on the revision petitioners.

4.I find no infirmity in the order passed by the learned II Additional District Judge, Thiruvallur, consequently the Civil Revision Petition stands dismissed. No costs. Connected Civil Miscellaneous Petition is closed.

सत्यमेव जयते **22.02.2019**

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

jrs

P.T.ASHA, J.
jrs

To
The II Additional District Judge,
Tiruvallur at Poonamallee.



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