

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP(PD).No.788 of 2012
and
M.P.No.1 of 2012

1.Pushpavathi Ammal

2.T.Rani

... Petitioners

vs.

1.S.Rukmangathan

2.R.Selvarani

3.S.R.Thilaga

4.S.R.Sethuraman

5.The Sub Registrar,
Theagaraya Nagar Sub Registrar Office,
Saidapet,
Chennai - 600 015.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 21.12.2011 in IA.No.16620 of 2011 in OS.No.10934 of 2010 on the file of the VII Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.V.Manisekaran

For Respondents : Ms.A.Rajeswari
for Mrs.Aparnadevi

ORDER

The civil revision petitioners are the plaintiffs in OS.No.10934 of 2010 on the file of the VII Additional Judge, City Civil Court, Chennai.

2. The civil revision petitioners / plaintiffs filed the above suit for the following reliefs:

- (i) to declare the sale deed dated 29.03.2007 as null and void,
- (ii) to a grant permanent injunction restraining the defendants from interfering with the plaintiffs' possession and enjoyment over the suit property and,
- (iii) to grant a mandatory injunction directing the fifth defendant, the Sub Registrar, Saidapet to register the decree on the book I on the file of the Registrar.

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3. The defendants filed their written statement and both the parties went for trial. The evidence on both sides is completed and the suit is posted for arguments. At this juncture, the plaintiffs filed an application

in IA.No.16620 of 2011 under Order XVI Rules 5 and 7 read with Section 151 of Civil Procedure Code praying to issue summons to the defendants 2 to 4 and to let in evidence.

4. In the counter filed by the respondents, it is contended that the first defendant had adduced evidence on the side of the defendants 2 to 4 and therefore there is no necessity for them to adduce evidence and that too on the side of the plaintiffs.

5. The learned VII Additional Judge, City Civil Court, Chennai after analysing the evidence on record, dismissed the application vide his fair and decreetal orders dated 21.12.2011.

6. Mr.V.Manisekaran, learned counsel appearing for the civil revision petitioners / plaintiffs contended that the defendants 2 to 4 had no means to purchase the suit property and therefore, in order to establish the said fact, all of them have got to be examined on their side.

7. A perusal of records shows that the plaintiffs have filed IA.No.16620 of 2011 in OS.No.10934 of 2010 on the file of the VII Additional

Judge, City Civil Court, Chennai to issue summons to the defendants 2 to 4 to examine them as witnesses on the plaintiffs' side. It is also seen that the the defendants 2 to 4 have adduced evidence through the first defendant to show that they have sufficient means to purchase the suit property and certain documents were also filed on the side of the defendants 1 to 4. It is relevant to point out that the second defendant is the wife of the first defendant and the defendants 3 and 4 are the children of the defendants 1 and 2. The first defendant had filed his written statement which was adopted by the other defendants.

8. In fact, the learned VII Additional Judge, City Civil Court, Chennai has observed that the income tax returns and bank statements of the defendants 2 to 4 were filed before the court to show that they had sufficient means to purchase the suit property. The learned Judge has further observed that when the case is posted for advancing arguments on both sides, the plaintiffs have filed the application only to protract the proceedings. Whether the documents filed by the defendants are sufficient to prove the fact that the defendants had sufficient means to purchase the suit property is a matter to be decided after conclusion of trial and the plaintiffs cannot compel the defendants 2 to 4 to enter into the witness box

and adduce evidence on their side. All the observations made by the learned VII Additional Judge, City Civil Court, Chennai. are well found and I do not see any reason to interfere with the findings recorded by the learned Judge.

9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

10. Since the suit is of the year 2010, the learned VII Additional Judge, City Civil Court, Chennai is directed to dispose of the suit in OS.No.10934 of 2010 within a period of two months from the date of receipt of a copy of this order.

08.07.2019

mbi

Index : Yes/No

Speaking / Non-speaking order

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R.HEMALATHA, J.

mbi

To

- 1.The VII Additional Judge,
City Civil Court,
Chennai.
- 2.The Sub Registrar,
Theagaraya Nagar Sub Registrar Office,
Saidapet,
Chennai - 600 015.



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