

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2019

Coram

The Honourable Mrs.**Justice R.HEMALATHA**

C.R.P.(PD)Nos.1443 and 1444 of 2013
and
M.P.No.1 of 2013

1. Baiyamma
2. Ramaiah

... Petitioners in both petitions

Vs.

1. C.Venkatesh
2. Ramakka
3. Nandhakumar
4. K.Chinnaswamy
5. C.K.Babu
6. N.Sudhakaran
7. Annayappa
8. Supramani
9. Rani

... Respondents in both petitions

PRAYER IN CRP(PD) NO.1443 OF 2013 This Civil Revision

Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 07.02.2013 passed in I.A.No.2 of 2013 in O.S.No.19 of 2010 by the learned Additional District Judge, Krishnagiri.

PRAYER IN CRP(PD) NO.1444 OF 2013 This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 07.02.2013 passed in I.A.No.3 of 2013 in O.S.No.19 of 2010 by the learned Additional District Judge, Krishnagiri.

For Petitioners : Mr.K.Chandrasekaran
(In both petitions)

For Respondents : Mr.V.Lakshminarayanan for R1
(In both petitions)

No appearance for R2 to R9

COMMON ORDER

The present civil revision petitions have been filed against the orders dated 07.02.2013 passed in I.A.No.2 of 2013 and I.A.No.3 of 2013 in O.S.No.19 of 2010 by the learned Additional District Judge, Krishnagiri.

2. The revision petitioners in both the civil revision petitions are the defendants 1 and 2 in the suit in O.S.No.19 of 2010 on the file of the learned Additional District Judge, Krishnagiri. The first respondent herein filed the suit in O.S.No.19 of 2010 for the following reliefs.

(i) to declare the General Power of Attorney deeds dated 28.03.2007 and 05.08.2009 and the sale agreement dated 02.05.2007 are null and void.

(ii) to declare that the sale deed dated 12.08.2009 is null and void and

(iii) permanent injunction restraining the defendants 5 to 10 from treating any kind of encroachment over the suit properties.

(iv) permanent injunction against the defendants 5 to 10 restraining them from creating any encumbrance or alienation in respect of the suit properties.

3. The defendants filed their written statement denying all the allegations of the plaintiff and both parties went for trial. At this juncture, the defendants 1 and 2 filed two applications in I.A.No.2 of 2-13 and I.A.No.3 of 2013 praying to reject the original sale agreement dated 24.11.2006 filed by the plaintiff in the instant suit and to compare the original sale agreement dated 24.11.2006 with the photo copy of the said sale agreement filed in the earlier suit in O.S.No.72 of 2009 on the file of the District Munsif Court, Hosur.

4. The learned Additional District Judge, Krishnagiri, after analysing the evidence on record, dismissed both the applications, vide his fair and decretal orders dated 07.02.2013 by observing that the revision petitioners can always cross examine the witnesses, who would be examined on the side of the plaintiff with regard to the photocopy of Ex.A1 filed in O.S.72/2009. Another observation made by the trial court is that the defendants did not raise any objection with regard to the sale agreement dated 24.11.2006 at the initial stage itself and that they have filed the present applications only to drag on the proceedings. Aggrieved over the orders passed by the learned Additional District Judge, Krishnagiri, the present civil revision petitions are filed.

5. Mr.K.Chandrasekaran, learned counsel appearing for the revision petitioners contended that the photo copy of the sale agreement dated 24.11.2006 was filed in O.S.No.72 of 2009 and original sale agreement was filed in the present suit in O.S.No.19 of 2010. His specific contention is that a careful comparison of both the documents would clearly go to show that the original sale agreement dated 24.11.2006 has been created for the purpose of the present case. Therefore, he contended that the sale agreement dated 24.11.2006 filed in O.S.No.19 of 2010 should be rejected.

6. Per contra, Mr.V.Lakshminarayanan, learned counsel appearing for the first respondent drew the attention of this court to the plaint in O.S.No.19 of 2010 and contended that the parties knew several earlier proceedings in respect of the same suit properties in O.S.No.373 of 1981 and the suit in O.S.No.116 of 1977 on the file of the District Munsif Court, Hosur. He also pointed out that in the written statement filed by the defendants in O.S.No.72 of 2009 and O.S.No.19 of 2010, there is no pleading that there are two sets of agreements in respect of the suit properties. His specific contention is that when there are no averments in the written statement that the sale agreement is concocted, the petitioners cannot maintain these two applications.

7. Both the counsels admitted that the earlier suit in O.S.No.72 of 2009 was withdrawn by the plaintiff. The said suit was filed for a permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

8. The main contention of the revision petitioners is that the photo copy of the sale agreement dated 24.11.2006 filed in O.S.No.72 of 2009 is totally different from the original sale

agreement dated 24.11.2006 filed in O.S.No.19 of 2010. The learned counsel appearing for the revision petitioners contended that when the suit in O.S.No.72 of 2009 itself was dismissed as withdrawn, he would not have any opportunity to cross examine the plaintiff with regard to the photo copy of the sale agreement filed in O.S.No.72 of 2009. He therefore prayed for granting liberty to the revision petitioners to call for the photo copy of the sale agreement filed in O.S.No.72 of 2009.

9. However, when there are no pleadings in the written statement that there are two sets of agreements and that the sale agreement dated 24.11.2006 is concocted for the purpose of filing the suit in O.S.No.19 of 2010, the revision petitioners' application in I.A.No.2 of 2013 and I.A.No.3 of 2013 are to be dismissed and the trial court has also rightly observed that the photo copy of a document can be taken out with a different font size and based on this alone, the court cannot come to a conclusion that the original sale agreement differs from the photo copy of the same filed in O.S.No.72 of 2009. The observation of the learned Additional District Judge, Krishnagiri cannot be found fault with.

10. In the facts and circumstances, I do not find any reason to interfere with the findings recorded in I.A.No.2 of 2013 and I.A.No.3 of 2013 in O.S.No.19 of 2010 on the file of the Additional District Judge, Krishnagiri. Since the suit is of the year 2010, the learned Additional District Judge, Krishnagiri is directed to dispose of the suit in O.S.No.19 of 2010 within a period of six months from the date of receipt of a copy of this order.

11. With the above observation, these civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2019

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Index : Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

To

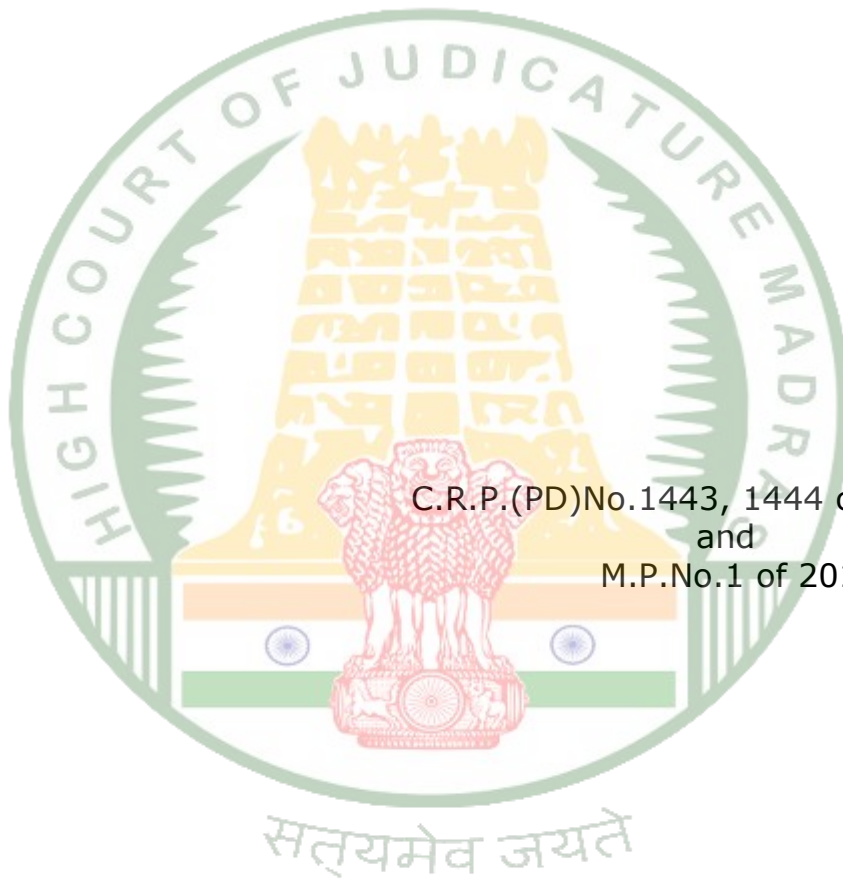
The Additional District Judge, Krishnagiri.

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CRP(PD)No.1443,1444 of 2013

R.HEMALATHA.J.,

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