



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P. (MD) No.1312 of 2012

and

M.P. (MD) No.1 of 2012

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1. Rajamanickam

2. Malarkodi

3. Subramani

4. Rajendran

5. Ravi

... Petitioners

Vs

1. Agasthin

2. Veeramuthu

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of CPC, praying to call for the records in pursuant to the order and decretal order dated 28.03.2012 in E.A.No.75 of 2007 in E.A.No.73 of 2006 in E.P.No.54 of 2000 in O.S.No.188 of 1999 passed by the learned Subordinate Judge, Pudukkottai and to set aside the same by allowing this civil revision petition.

For Petitioners : Mr.M.Karthikeya Venkitachala

For R1 : M/s.S.Prabha
for Mr.S.Deenadhayalan

For R2 : No appearance

O R D E R

This civil revision petition has been filed challenging the fair and final order passed by the Court below in exercise of its jurisdiction under Order 21 Rule 58(1) of C.P.C.

2. The first respondent filed a suit for specific performance against the second respondent and a decree came to be passed on 23.12.1999. Thereafter, a sale deed was also executed in favour of the first respondent in the year 2004. The first respondent thereafter took steps to take delivery of the property, by filing E.A.No.73 of 2006. When the petitioners, who are the children of the second respondent, came to know about the same, they filed a claim petition before the Court below in E.A.No.75 of 2007 under Order 21 Rule 58(1) of C.P.C.



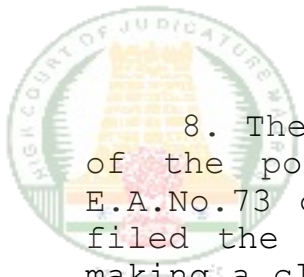
3. The claim petition was filed on the ground that the property in question is a joint family property and that, the second respondent/defendant has only 1/7th share in the property and if at all, he executes the sale agreement, he can execute it only for 1/7th share and he has no right to execute the sale agreement for the entire property.

4. The learned counsel appearing for the petitioners submitted that even though the property stands in the name of the second respondent, the source, from which, the property was purchased in his name, has been specifically stated in the petition and therefore, the property is a joint family property, in which, all the petitioners have a share. The learned counsel further submitted that the second respondent has kept the petitioners in dark and has executed the sale agreement for the entire property and the agreement is not binding on the petitioners. The learned counsel further submitted that the Court below, while dealing with an application under Order 21 Rule 58(1) of C.P.C., must deal with it like a regular suit and therefore, the Court below ought to have framed issues. Even this was not done in the present case and therefore, the order passed by the Court below requires interference.

5. Per contra, the learned counsel appearing on behalf of the first respondent/plaintiff submitted that the application itself was a collusion between the petitioners and the second respondent. The petitioners are admittedly the children of the second respondent and all of them are living under the same roof. The learned counsel further submitted that the petitioners were aware about the sale agreement executed by the second respondent and also the decree passed by the Court and inspite of the same, resisted the delivery of the possession by making a false claim as if they are also entitled to claim share in the property. The learned counsel concluded her arguments by submitting that the Court below has given cogent reasons while dismissing the application and there is absolutely no ground to interfere with the same in this civil revision petition.

6. This Court has carefully considered the submissions made by either side and the materials available on record.

7. The admitted case is that the first respondent/plaintiff had filed a suit for specific performance against the second respondent / defendant. The property admittedly stood in the name of the second respondent. The suit was decreed exparte on 23.12.1999 and the sale deed was also executed in favour of the first respondent/plaintiff in the year 2004. Till this stage, no one had objected at any stage of the proceedings.



8. The first respondent / plaintiff took steps to take delivery of the possession of the property by filing an application in E.A.No.73 of 2006. It is only at this stage, the petitioners had filed the present application under Order 21 Rule 58(1) of C.P.C, making a claim over the property.

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9. The petitioners are making a claim over the property on the ground that the property was purchased in the name of the second respondent only after selling certain joint family properties and from the income derived out of the sale proceeds.

10. Even though this was the stand taken by the petitioners in the application, the Court below has given a categorical finding that the petitioners and the second respondent/defendant are living under the same roof. The second respondent is said to have worked at Kerala and with the income that was earned by him, the property was purchased. This was admitted by P.W.1 who is the son of the second respondent, during evidence. There was an further admission that was made by P.W.1 to the effect that the so called suit for partition was filed only after sale deed was executed in favour of the first respondent pursuant to the decree of the specific performance. The Court below categorically found that the application itself has been filed only with a view to prevent the first respondent herein from taking delivery of the property and there is absolutely no bonafide in the claim made by the petitioners. It is also seen that even the patta in this case stood in the name of the second respondent.

11.This Court does not find any illegality or infirmity in the order passed by the Court below. The Court below has given cogent reasons while dismissing the application and this Court does not find any ground to interfere with the same.

12.In the result, this Court does not find any merits in the civil revision petition and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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To
The Subordinate Judge, Pudukkottai.

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