



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP (MD) .No.557 of 2019 (PD)

and

C.M.P. (MD) .No.2747 of 2019

1.S.P.Meenal

2.Manchula

3.Kasirajan

... Petitioners/Appellants/
Respondents/Defendants

Vs.

N.Rajalakshmi

... Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and executable order dated 18.09.2013 made in C.M.A.No.39 of 2010 on the file of the Sub Judge, Tirumangalam confirming the order dated 30.07.2010 made in I.A.No.1103 of 2009 in O.S.No.443 of 2009 on the file of the District Munsif, Tirumangalam.

For Petitioners : No appearance

For Respondent : Mr.S.Srinivasa Ragavan

O R D E R

This Civil Revision petition has been preferred against the fair and executable order dated 18.09.2013 made in C.M.A.No.39 of 2010 on the file of the Sub Judge, Tirumangalam, confirming the order dated 30.07.2010 made in I.A.No.1103 of 2009 in O.S.No.443 of 2009 on the file of the District Munsif, Tirumangalam.

2.When the matter is posted for hearing and disposal today, there is no representation on behalf of the petitioners.

3.The revision petitioners, who are the defendants have filed C.M.A.No.39 of 2010 on the file of the Sub Judge, Tirumangalam, to set aside the order passed in I.A.No.1103 of 2009 in O.S.No.433 of 2009. The respondent, who is the plaintiff has filed I.A.No.1103 of 2009 to grant an order of temporary injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property till the disposal of the suit and to pass an exparte order of ad-interim injunction to that effect till the disposal of the application.



4. In the said I.A., the respondent/plaintiff has contended that the plaintiff has filed the suit for claiming right and title over the possession and enjoyment of the suit property by way of a gift settlement deed, dated 24.02.2009. The said gift deed was executed by his father viz., A.Narasimmalu and the same was also accepted by the petitioner and he was in possession and enjoyment of the same. It is further contended that the plaintiff's father has purchased the suit property on 17.11.1995 for valuable consideration from one Basheer Ahmed. Originally, the suit property was purchased by one Mohamed Hussain Sheriff under the registered sale deed dated 16.02.1962 and he was enjoying the same and after his death, the property devolved upon his legal heirs and the said legal heirs executed a power of attorney in favour of Basheer Ahmed and through him, the plaintiff's father has purchased the property. It is further contended that the defendants have no right over the said property comprised in Survey No.162/8 and later, it was sub-divided as Survey No.162/8A2 measuring 12 cents and the total extent in said the Survey Number is 50 cents. It is further contended that the first defendant has purchased an extent of 38 cents out of 50 cents in the suit survey number and the same has been sold out to one Ramalingam and patta also transferred for the said portion in the name of the said Ramalingam. The plaintiff came to understand that the Revenue Officials connivance with the first defendant seems to have obtained patta for the remaining extent of 12 cents viz., the suit property which was owned by the plaintiff and these facts were suppressed by the first defendant. By taking advantage of the wrong patta granted in favour of the first respondent, she has executed a settlement deed to her daughter viz., the second defendant under registered gift settlement deed and these facts came to the knowledge of the plaintiff very recently. Hence, he has also taken steps to cancel the patta granted in favour of the first defendant claiming the gift deed is a void one. Hence, the plaintiff has filed the present I.A., for the aforesaid relief.

5. The first respondent/first defendant had filed his counter statement stating that the contentions raised by the plaintiff in the said petition regarding the issuance of wrong UDR patta, alienation and trespass by the defendants in the suit property. The defendants also elaborately discussed how the property obtained by the plaintiff and what is the extent in the said Survey Number and also original survey number and the Survey number of the subdivision and also its extent. Hence, the defendants totally denied the averments made by the plaintiff. The defendants further contended that the vendor of the plaintiff viz., Baseer Ahmed, fully aware of the change of patta and the subdivision. The said Baseer Ahmed in the year 1995 transferred the patta from the respondent's name to his name illegally. Hence, the respondents contended that the sale deed of the father of the plaintiff and her settlement deed are void and the plaintiff has no right over the property. Hence, the respondents sought for dismissal of the said petition.



6.The trial Court has observed the said contentions raised by both sides and discussed the same regarding the title of the property as well as the vendor of the defendants, by examining the documents placed by both sides, especially the sale deed dated 16.02.1962, which was marked as Ex.A.3. Further observed that what is the total extent of the suit Survey Number and who are the parties having right in the said survey number and how the patta was issued and what period the said patta was issued and what are the changes made by subsequently and gave a finding that the plaintiff has prima facie title over the property and the respondents does not have any right or title over the suit property and allowed the I.A. Against the said order, the defendants have filed Civil Miscellaneous Appeal in C.M.A.No.39 of 2010.

7.In C.M.A., the Subordinate Court, Thirumangalam has observed the right of both parties and gave a findings, which is extracted hereunder:

"In which the petitioner has stated that her father gifted the property in Survey No.162/8A2 is 12 cents in her favour. That document is marked as Ex.P.1. Her father got the property through a sale deed executed by one Mr.Basheer Ahamad for himself and power agent of Jamoorthbee and four others on 17.11.1995. That sale deed SRO copy is marked as Ex.P.2. The power agents executed the sale on behalf of the legal heirs of one Mohamad Hussain Sherif and he has purchased the suit property on 16.02.1962. That is marked as Ex.P.3. So the petitioner arrived the title towards the petition schedule property through proper sale and sale had obtained patta from Madurai South Taluk. For which her father had given a petition before Taluk Office. That petition copy is marked as Ex.P.4 and the Tahsildar passed an order to effect the transfer of patta, that copy of the order is marked as Ex.P.5 and the patta Pass Book stands in the name of petitioner's father Narasimalu is marked as Ex.P.6. The previous owner having patta Pass Book in his name marked as Ex.P.7 and Narasimalu paid tax receipts marked as Ex.P.8. Now the respondents having no right over the schedule mentioned property trying to grab the property from the petitioner. For which, they have falsely obtained patta in their favour that A Register copy is marked as Ex.P.9. The fraudulent sale deed obtained by the first respondent that S.R.O copy is marked as Ex.P.10. So afraid of the same and the respondents are financially sound and physically having rowdy elements threatening the peaceful possession of the petitioner, hence, she had coming forward with this suit and petition to protect her right over the schedule mentioned property."



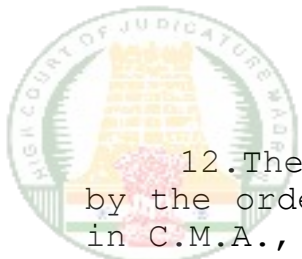
8.The trial Court also observed the fact that the plaintiff has proved his title through Ex.P.1 to Ex.P.3 are the property registered deed and the petitioner is entitled for 12 cents and he is in possession and enjoyment of the suit property. In the C.M.A., the defendants have contended that Ex.P.2 southern boundary is wrongly mentioned and the R.D.O proceedings are not carefully considered by the trial Court. Hence, in the C.M.A., the Appellate Authority has observed that there is no oral evidence let in by both parties and only with the available documents and records, the I.A., has been decided regarding the prima facie case and hence, the Appellate Authority also gave an observation that the civil miscellaneous appeal is dismissed and the order of the trial Court was confirmed. Aggrieved against the same, the Civil Revision Petition has been preferred by the petitioner.

9.The respondent has contended that he filed an amendment application seeking additional relief with regard to the documents and the same was also allowed by the trial Court. Aggrieved against the same, the defendants preferred the civil revision petition in C.R.P.No.512 of 2018, wherein a direction was given by this Court as under,

"Accordingly, the civil revision petition is allowed and the order dated 23.08.2017 passed in I.A.No.636 of 2017 in O.S.No.443 of 2009 is set aside and the matter is remitted back to the Court below and the Court below is directed to dispose of I.A.NO.636 of 2017 in O.s.No.443 of 2009 on merits and in accordance with law after hearing both parties, within a period of one month from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the Court below for early disposal of the petition. No costs. Consequently, the connected miscellaneous petition is dismissed."

10.The other arguments advanced by the respondent is that the C.M.A., was filed in the year 2010, which was disposed of in the year 2013, whereas, the petitioner has preferred the C.R.P in the year 2019, after a very long time.

11.In the grounds, the petitioners once again contended that the Courts below failed to see under Order 39 Rule 1 of C.P.C., is concerned, the three ingredients such as prima facie case, balance of convenience and irreparable loss and injury have to be satisfied and prima facie the respondent has no title with the suit property or her title is clouded and hence, she has to seek the declaratory relief, secondly the balance of convenience in favour of the petitioners alone as they produced several documents to show their right and title and by the injunction the petitioners alone will be affected and hence, the interim relief cannot be granted in favour of the plaintiff.



12.The petitioners contended that they have very much aggrieved by the order of both the Courts below whereas the order was passed in C.M.A., in the year 2013 and the C.R.P was filed only in the year 2019. Further, when the matter is taken up for hearing, there is no representation on behalf of the petitioners, which reveals the fact that the petitioners have no interest to proceed and contest the said case and only with a view to delay the proceedings, they have preferred the C.R.P. Hence, there is no merit in the C.R.P and no interference is warranted to the order of the trial Court.

13.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. However, Since the suit is of the year 2009, the trial Court is directed to dispose of the same within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Sub Judge,
Thirumangalam.

2.The District Munsif,
Tirumangalam.

Copy to:

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate SR-62365.

+1 CC to M/s.R.SURIYANARAYANAN, Advocate SR-62638.

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CS: (06/06/2019) 5P 7C