



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P(MD)No.1535 of 2019

and

C.M.P. (MD)No.8055 of 2019

1.Mithar Mohaideen

2.Micheal Ammal ...Petitioners/Petitioners 1 and 2 /
Defendants 1 and 3

Vs.

Rajas Educational and Charitable
Trust through its
Vice Chairman A.Jesus Raja
S/o.Raja,
Vadakkankulam,
Radhapuram Taluk,
Tirunelveli District.

...Respondent / Respondent /
Plaintiff

(The Second Defendant Diraviyaraj, died during the pendency of the suit and his wife Micheal Ammal was brought on record as his legal heir. Though the Second Defendant, Diraviyarajm was shown in the cause title of the I.A., he is not shown as party to this CRP as he is dead)

PRAYER: Civil Revision Petition is filed, under Under Article 227 of the Constitution of India, to call for the records relating to the order dated 17.08.2019 in I.A.No.5 of 2019 in O.S.No.33 of 2013 on the file of the Subordinate Judge, Valliyoor, Tirunelveli District, allow the revision petition and set aside the same.

For Petitioners : Mr.Haja Mohideen Gisthi



ORDER

This Civil Revision Petition has been filed against the order, dated 17.08.2019 passed in I.A.No.5 of 2019 in O.S.No.33 of 2013 by the learned Subordinate Judge, Valliyoor, Tirunelveli District.

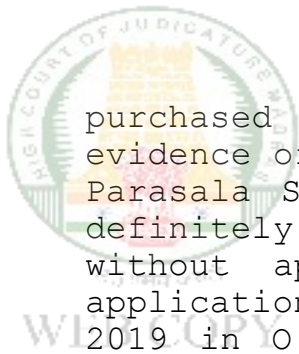
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2.Heard the learned counsel appearing for the petitioners and perused the materials available on record. Though notice was served on the respondent and his name is also printed in the cause list, none appeared.

3.The learned counsel for the revision petitioners would contend that I.A.No.5 of 2019 in O.S.No.33 of 2013 was filed seeking to issue witness summons to the Tahsildhar of Neyyattinkara and the Sub Registrar of Parasala Sub Registrar's office both at Trivandrum, Kerala State for the purpose of giving oral evidence. According to the revision petitioner, the defence of the first petitioner relating to title to the suit property is that the deceased second petitioner / second defendant was the original owner of the property and he was in possession and enjoyment of the same. All the revenue records were standing in his name. The learned counsel would further contend that the first petitioner / first defendant purchased the property through the power agent of the deceased second petitioner / second defendant. Further, the suit property was sold in favour of the respondent / plaintiff under a fraudulently registered sale deed dated 28.02.1990 as Document No.860 / 1990 on the file of Sub Registrar of Parasala at Trivandrum, Kerala State. Subsequent to the purchase of the first petitioner / first defendant, all the revenue records, including patta, were changed to his name by the competent revenue authorities and that the respondent / plaintiff being a very influential person falsely contends that the trust had purchased the suit property from the deceased second petitioner / second defendant.

4.The learned counsel for the revision petitioner would further contend that when the vendors of the property not owning any property in the State of Kerala, they are not entitled to register the property in their name with the Register office at Karala for the immovable properties situated in the State of Tamil Nadu. For the purpose of examining all these aspects, it is just and necessary to examine the Tahsildhar of Neyyattinkara and the Sub Registrar of Parasala Sub Registrar's office both at Trivandrum, Kerala State. However, without considering all these aspects, the Court below, simply rejected the said application.

5.Considering the submissions made by the learned counsel for the revision petitioner and on perusal of the records, this Court is of the view that the Vice Chairman of the respondent / plaintiff had examined as P.W.1 and during the examination, when the said Vice Chairman admitted that the vendor's signature is not found in the sale deed, dated 28.02.1990, under which, the trust is said to have



purchased the suit property, this Court is of the opinion that the evidence of the Tahsildhar of Neyyattinkara and the Sub Registrar of Parasala Sub Registrar's office both at Trivandrum, Kerala State, definitely will assume great importance. However, the Court below without appreciating all these facts, had dismissed the said application. Hence, the order of the court below made in I.A.No.5 of 2019 in O.S.No.33 of 2013, dated 17.08.2019, on the file of the Subordinate Judge, Valliyoor, Tirunelveli District, is liable to be set aside. Accordingly, the same is set aside. The petitioners / defendants are permitted to examine the Tahsildhar of Neyyattinkara and the Sub Registrar of Parasala Sub Registrar's office both at Trivandrum, Kerala State, as defence witnesses.

6.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

/ True Copy /

Sub Assistant Registrar(CS-)

To

The Subordinate Judge,
Valliyoor, Tirunelveli District.

**Order made in
C.R.P (MD)No.1535 of 2019
13.09.2019**

rj2

ES/01.10.2019/3P/2C