

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.1021 of 2018

1. Muniamma
2. Rajamanickam
3. Sakthivel
3. Murugan
4. Krishnan

..Petitioners

Vrs.

1. Palaniappa
2. Madhappa
- 3.Barikaalan @Barekal
- 4.Muniraj

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, against the order and decreetal order dated 20.09.2017 passed in C.M.A.No.4 of 2017 on the file of the Subordinate Court, Hosur, reversing the order and decreetal order dated 16.02.2017 passed in I.A.No.471 of 2016 in O.S.No.178 of 2015 on the file of the District Munsif, Denkanikottai cum Judicial Magistrate and prays the same my kindly be set aside.

For Petitioners : Mr.A.Tamilvanan

For Respondents :Mr.J.Ramakrishnan

ORDER

This Revision is filed by the plaintiffs in O.S.No.178 of 2015 aggrieved by the order of the appellate Court in allowing the appeal in C.M.A.No.4 of 2017, vacating the order of interim injunction granted by the trial Court in I.A.No.471 of 2016. The plaintiffs sued for declaration of title and consequential injunction contending that they have obtained the suit properties by way of a gift deed executed by one Lakshmi in favour of the 1st plaintiff on 03.11.1978 and patta has also been granted in their favour.

2. The suit was resisted by the defendant contending that the settlor Lakshmi is not the absolute owner of the properties and the suit properties belonged to one Nanjappa Gounder who died leaving behind two sons and three daughters. The Revenue records were changed with the active help of the Karnam. The plaintiff cannot claim absolute title. Lakshmi being one of the co-owners, was not entitled to settle the entire property in favour of the plaintiff. It was also pointed out that the same plaintiff had filed a suit in O.S.No.584 of 1993 for declaration of her title

and injunction based on the very same settlement deed and the said suit was dismissed for default on 09.09.1999. Therefore, according to the defendants, the present suit itself is barred. The trial Court however granted an injunction based on the revenue records which stood in the name of the plaintiff.

3. Aggrieved, the defendants preferred an appeal in CMA No.4 of 2017. The learned Subordinate Judge, Hosur who heard the appeal concluded that the plaintiff is guilty of suppression of the facts, since the dismissal of the earlier suit in O.S.No.584 of 1993 on 09.09.1999 was not disclosed.

4. The appellate Court also found that the suit property belonged to Nanjappa Gounder and he died leaving behind two sons and three daughters and therefore the settlor Lakshmi had no right to the entire property.

5. On the above findings, the learned appellate Judge vacated the

order of injunction.

6. I have heard Mr.A.Tamilvanan, learned counsel appearing for petitioners and Mr.Mr.J.Ramakrishnan, learned counsel appearing for respondents.

7. Mr.A.Tamilvanan, learned counsel appearing for the petitioners would vehemently contend that the appellate Court was not right in allowing the appeal and vacating the order of injunction without arriving at a factual conclusion regarding possession. According to him, the plaintiffs have established their possession of the property by producing relevant revenue records and in the absence of any other contra evidence, the lower appellate Court was not right in vacating the injunction granted by the trial Court.

8. Grant of injunction is a discretionary remedy and a person who seeks injunction has shown that he has come to Court with clean hands. Even in the counter affidavit filed before the trial Court, the defendants have specifically pointed out that the plaintiffs have suppressed the filing and

dismissal of the suit in O.S.No.584 of 1993. Apart from that there is also a statutory bar under Order IX Rule 9 of the Code of Civil Procedure which prevents the plaintiffs from instituting another suit, once the suit for declaration of title is dismissed for default.

9. In view of the above, I do not find any merit in the Civil Revision petition and the Civil Revision petition fails and it is dismissed.

10. The trial Court namely the District Munsif cum Judicial Magistrate, Denkanikottai is directed to dispose of the suit in O.S.No.178 of 2015 within a period of six months from the date of receipt if a copy of the order without being influenced by any of the observations made in this order. No costs.

21.07.2020

vum

Note:Time Bound case

Index: Yes/No

Speaking order / Non speaking order

R.SUBRAMANIAN, J.

vum

To:

1. The District Munsif cum Judicial Magistrate,
Denkanikottai.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



CRP (PD) No.1021 of 2018

WEB COPY

21.07.2020