

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.R.P (PD).No.3669 of 2011

R.Sethunarayanan

.. Petitioner

Vs

1. S.P.Velayudam

2. R.Sethu Narayanan

3. S.Gopalakrishnan

.. Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the injunction granted in I.A.No.1166 of 2011 in O.S.No.547 of 2011 dated 22.08.2011 on the file of District Munsif, Alandur.

For Petitioner :

Mr.V.Prakash

Senior Counsel

for Mr.K.Sudalaikannu

For Respondents :

Mr.S.Palanirajan (R1)

No appearance

R2 and R3 (given up)

J U D G M E N T

This Civil Revision Petition has been filed by the petitioner against the order passed by the learned District Munsif, Alandur against the exparte ad-interim-injunction order passed by the learned District Munsif Court, in I.A.No.1166 of 2011 in O.S.No.547 of 2011 on 22.08.2011.

2. The case of the petitioner is that the subject matter of the suit property in O.S.No.547 of 2011 on the file of the learned District Munsif, Alandur originally belongs to the petitioner and he purchased the said property, under registered Sale Deed dated 13.11.1978 from RMC Traders, a registered partnership firm and the sale deed was executed by Sri.A.E.Ramayam, who was one of the partners of the firm and power of attorney holder for the other partners. The first respondent filed a suit against the respondents 2 and 3 in O.S.No.547 of 2011 on the file of the District Munsif Court, Alandur and in the said suit, he filed an application in I.A.No.1166 of 2011 got an order of ad-interim injunction on 23.08.2011. It is the further case of the petitioner that he is a permanent resident of United States of America and residing at 14202, Ballfour, Parklane, Houston, Texas, Zip-77047 and not residing at No.79,

Secretariat Colony, Madras-600 010 on the date of filing of the suit. He would further submit that the second respondent executed settlement deed in favour of the third respondent on 06.07.2011 relating to the suit property and the third respondent based on the settlement deed, executed a Sale deed in favour of the first respondent on 29.07.2011 in respect of the suit property. It is further stated that the suit property originally belongs to the petitioner and the first respondent do not have right over the said property and the first respondent impersonated and created settlement deed in favour of the third respondent. Inturn the third respondent created Sale Deed in favour of the first respondent. Subsequently, in order to grab the petitioner's property, the respondents colluded and the first respondent filed suit against the respondents 2 and 3 for bare injunction and also filed an application in I.A.No.1166 of 2011 and got an exparte-order of ad-interim injunction. When the petitioner came to know about the forgery, he immediately filed writ petition before this Court in W.P.No.20242 of 2011 seeking for a direction to the respondents 1 and 4 therein i.e., (i) Secretary, Home Department , Government of Tamil Nadu, Fort St., George, Chennai. (ii) The Commissioner of Police, Greater Chennai,Egmore, Chennai. (iii) The

Inspector of Police, Neelangarai Police Station, Chennai and (iv) The Inspector General of Registration, Santhome High Road, Mylapore, Chennai to immediately commence investigation and to take action against the respondents herein. This Court by an order dated 29.08.2017 has granted an order of interim injunction not to encumber or alienate the subject property by the first respondent herein for a period of two weeks and the petitioner was permitted to make detailed complaint before the Inspector of Police, Neelangarai Police Station and on receipt of the said complaint, he is directed to investigate and file a report. Pursuant to which the petitioner filed a complaint to the Deputy Commissioner of Police, Land Grabbing cell, Adayar and also filed a petition before the District Munsif, Alandur seeking for certified copies of the documents filed in suit O.S.No.547 of 2011 and I.A.No.1166 of 2011 and also got the same. Thereafter, the petitioner filed the present revision before this Court seeking to set aside the order dated 22.08.2011, passed in I.A.No.1166 of 2011 in O.S.No.547 of 2011.

3. The learned counsel for the petitioner would submit that though the respondents impersonated and created the documents as if

Mr.R.Sethunarayanan has got a son Gopalakrishnan actually the petitioner does not have any son by name Gopalakrishnan. Since, the petitioner is residing in U.S.A., by taking advantage of his absence, the respondents forged the documents and tried to grab the property of the petitioner. When the first respondent filed the suit against the respondents 2 and 3, the trial Court without application of mind has passed an order of ad-interim injunction. Therefore, the petitioner by invoking the Article 225 of Constitution of India has filed the present revision. The learned counsel for the petitioner placed reliance on the Judgments of the Hon'ble Supreme court in the case of ***Surya Dev Rai Vs. Ram Chander Rai and others*** reported in ***(2003) 6 SCC 675*** and ***Chandrasekar Singh and others Vs. Siya Ram Singh and others*** reported in ***(1979) 3 SCC 118*** in support of his contentions. In the Judgment first cited, the Hon'ble Supreme Court has held that the power of High Court under Article 226 and 227 of the Constitution is always in addition to the revisional jurisdiction conferred on it. In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike

English courts has almost obliterated the distinction between the two jurisdictions. It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under [Article 227](#) is wider than the one conferred on the High Court by [Article 226](#) in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Relying on the said Judgment, the learned counsel for the petitioner would submit that the revision is maintainable and therefore the petitioner has filed this Civil Revision Petition.

4. Though the notice was issued and served on the first respondent and the first respondent also entered appearance through counsel, there is no representation on his behalf when the matter is called today. The petitioner has given up the relief in respect of the respondents 2 and 3. Now the revision is against only first respondent.

5. Heard the learned counsel for the petitioner and perused the materials available on record as well as the typed set of papers filed on behalf of the petitioner.

6. It is seen that the first respondent filed a suit in O.S.No.547 of 2011 on the file of District Munsif at Alandur against the respondents 2 and 3 for permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the land bearing Plot No.53, measuring an extent of 1 ground and 1350 sq.ft. (3750 sq.ft.) in "Sri Kapaleeswarar Nagar" sanctioned layout LPDM/D.T. & C.P. No.24 of 1974, situated at No.145, Neelankarai Village, Sholinganallur Taluk, Kancheepuram District of the suit property. Along with the suit, the first respondent filed application in I.A.No.116 of 2011 under Order XXXIX Rule 1 and 2 for temporary injunction. When he moved the application on 22.08.2011, the trial Court granted ad-interim injunction against the second and the third respondents and in favour of the first respondent herein and relying on the document filed by the first respondent in the said suit in O.S.No.547 of 2011.

7. A perusal of page 128 of the typed set of papers filed by the petitioner herein would go to show that the petitioner herein filed an application before the trial Court on 30.08.2011 seeking to furnish the certified copy of the plaint in O.S.No.547 of 2011, certified copy of the documents filed with the plaint and certified copy of the Affidavit filed in support of I.A. No.1166 of 2011 and the certified copy of the I.A.No.1166 of 2011 with endorsement order. Further, it is seen from the copy of the Sale deed dated 13.11.1978 (which is annexed in page 1 of the typed set of papers) that the petitioner herein purchased the property on 13.11.1978. In the said Sale Deed, the suit property has been shown as 'B' schedule property. In page 13 of the typed set of papers, the petitioner has annexed copy of the Certificate of Registration, Overseas citizen of India, wherein his father's name is mentioned as Ramudu Iyer and he is a resident of United States of America. Further in the alleged Settlement Deed dated 06.07.2011 (copy of which is annexed in page 17 of the typed set of documents), the Settlor's name is shown as R.Sethu Narayanan son of E.Ramudi Iyer residing at No.6 Raghavaiah Street, Mambalam, T.Nagar and he has executed a settlement deed in favour of Mr.S.Gopalakrishnan S/o. R.Sethu Narayanan, based

on which on 29.07.2011, the said S.Gopalakrishnan said to have executed a Sale deed in favour of the first respondent herein. (the copy of the sale deed is annexed in page 32 of the typed set of papers) and the suit in O.S.No.574/2011 came to be filed on 22.08.2011 itself within one month from the date of purchase and also filed an application for interim injunction in I.A.No.1166/2011. Though the trial court perused all the documents filed by the first respondent, based on the settlement deed executed in favour of the third respondent and also the sale deed executed in favour of the first respondent and also the police complaint, has granted ex parte-ad-interim-injunction.

8. The petitioner came to know the fact even in the month of August 2011 itself. An application was also filed by the petitioner herein before the trial Court for getting certified copy of the documents on 30.08.2011 itself. Further, it is seen that ad-interim injunction was granted on 22.08.2011 whereas the petitioner filed an application on 30.08.2011 stating that he is the permanent resident of United States of America and he is not residing at No.6, Ragavaiah Street, Mamabalam, T.Nagar and he has not executed settlement deed in favour of the third

respondent and the third respondent is not his son. Since all the respondents have tried to grab the property the petitioner applied for certified copy and also in the meanwhile filed Writ Petition before this Court in W.P.No.20242 of 2011. But he should have filed the suit against the first respondent or otherwise he should have approached the trial Court and get impleaded himself as a party and taken steps to vacate the ad-interim injunction granted by the trial Court. Further, the trial Court has not granted ad-interim-injunction against the petitioner herein as the petitioner is not the party to the suit. The second respondent Mr. Sethunarayanan, son of E.Ramudi Iyyer is the first defendant in the suit and therefore the petitioner should have ignored and should have filed a suit for declaration and injunction against the first respondent. Based on his title or otherwise he should have approached the trial Court get himself impleaded in suit O.S.No.547/2011 as a party and should have filed the petition for strike out the plaint. But the petitioner instead of doing all these, has filed the revision petition seeking to set aside the order of injunction granted in I.A.No.1166 of 2011 in O.S.No.547/2011 dated 22.08.2011 on the file of District Munsif, Alandur. The petitioner without approaching the trial Court and seeking remedy in the manner

known to law straightaway approached this Court to set aside the order of exparte-ad-interim injunction granted by the trial Court. The trial Court only found *prima facie* case based on Settlement Deed and Sale deed for granting the injunction. But the trial Court may not be aware of the facts explained by the petitioner. The sale deed is in favour of the petitioner even in the year of 1978 therefore the petitioner should have approached the trial Court first and should have taken steps to vacate the the ad-interim- injunction by impleading himself as party in the said suit. There is no quarrel with the proposition of law relied on by the Hon'ble Supreme Court in the decisions stated supra but in the said referred case , they approached the trial Court and appellate Court first and thereafter sought remedy before this Court. The facts and circumstances cannot be applicable to the present case on hand. One thing is clear that the petitioner has got the title deed but whereas the respondents herein taking advantage of the similar name and also similar father's name would have forged the documents. However, the petitioner should have approached the trial Court immediately and taken steps to vacate the exparte ad-interim injunction failed to do so and filed revision. Filing of writ and criminal complaint against the respondents will not bar the

petitioner to approach the Civil Court for appropriate remedy.

8.In view of the aforesaid facts and circumstances, the order passed by the trial Court dated 22.08.2011 in I.A.No.1166 of 2011 is set aside and the trial Court is directed to implead the petitioner herein as one of the respondents in I.A.No.1166/2011 and as one of the defendants in the suit in O.S.No.547/2011 and give opportunity of hearing to the petitioner and pass an order in I.A.No.1166/2011 and suit in O.S.No.547 of 2011 in accordance with law, within a period of six months.

With the above directions, this Civil Revision Petition is disposed of. No costs.

Index : Yes/No
Internet : Yes/No
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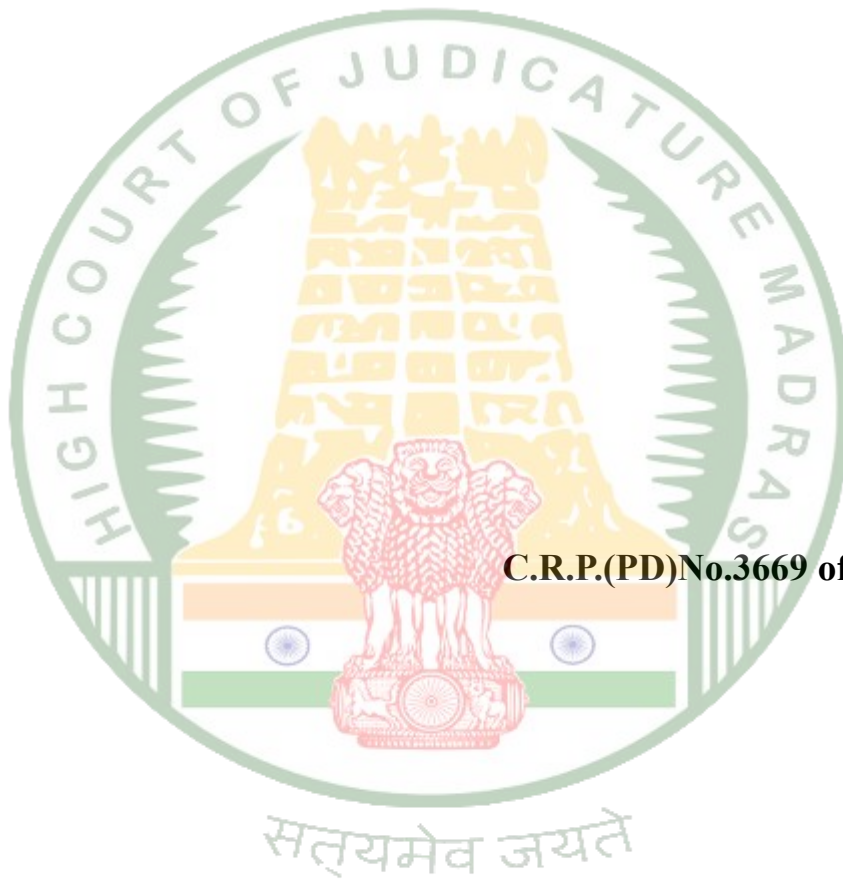
To

1. The District Munsif, Alandur.
2. The Section Officer, V.R. Section, High Court, Madras

C.R.P.(PD) No.3669 of 2011

P. VELMURUGAN, J.

arr



Order in

C.R.P.(PD)No.3669 of 2011

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31.07.2020

**Pre Delivery Order in
CRP(PD)No.3669 of 2011**

**To
The Hon'ble Mr.Justice P.VELMURUGAN**

From
A.R.REVATHI,
P.A.,



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