

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (PD) No.1098 of 2020 and
CMP No.5986 of 2020

Ramathal ... Petitioner /1st Defendant

Vs.

1. B.Bagyalakshmi ...1st Respondent/Plaintiff

2. Assistant Engineer,
Tamilnadu Generation and Distribution
Corporation Limited,
Nehru Nagar Distribution,
HG 319, Elango Nagar,
Coimbatore.

3. Assistant Executive Engineer,
Tamilnadu Generation and Distribution
Corporation Limited,
Nehru Nagar Distribution,
HG 319, Elango Nagar,
Coimbatore.

4. The Superintendent Engineer,
Tamilnadu Generation and Distribution
Corporation Limited,
Coimbatore metro, Tatabad, Coimbatore.

...2 to 4th Respondents/2 to 4th Defendants

Prayer: Civil Revision Petition filed under Article
227 of the Constitution of India to struck of the suit in
O.S.No.94 of 2020 on the file of the District Munsif,
Coimbatore.

For Petitioner : Mr. M.L.Ramesh

O R D E R

This Civil Revision Petition has been filed to
struck of the suit in O.S.No.94 of 2020 on the file of the
District Munsif, Coimbatore.

2. The petitioner herein is the first defendant and the first respondent herein is the plaintiff in the above said suit. The plaintiff has filed the suit for permanent injunction restraining the defendants 2 to 4 from in any manner from giving new electricity connection to the first defendant.

3. According to the petitioner, the first respondent herein/ plaintiff and her mother had entered into a sale agreement with him agreeing to convey an extent of 1.87 3/4 cents land in Survey No.331/1 at Kalapathy Village. Thereafter, the petitioner filed a suit in O.S.No.424 of 1988 for specific performance of the sale agreement and it was decreed on 04.09.1998. Challenging the decree and judgment, the defendants in that suit including first respondent herein filed an appeal in A.S.No.13 of 1999 and the same was dismissed on 14.03.2014. Against the appellate court's decree and judgment, they have filed second appeal in S.A.No.1818 of 2001 before this court. This court vide its decree and judgment dated reversed the findings of both the trial court and first appellate court and dismissed the suit. Therefore, the revision petitioner filed SLP No.18378 of 2014 before the Supreme Court and it was allowed by confirming the decree and judgment passed by the Trial court.

4. In pursuant to the decree and judgment passed in the suit in O.S.No.424 of 1988, the revision petitioner had filed an execution petition in E.P.No.717 of 2017 against the first respondent herein to execute her share of the property measuring 0.62 3/4 cents out of Acre 1.87 3/4 cents. It was objected by the first respondent herein that she had 1/2 share in the property and not 1/3. The execution court allowed the E.P.No.717 of 2017 on 09.08.2018. Challenging the above said order, the first respondent herein filed CRP No.2427 of 2018 before this court and the same was dismissed on 20.02.2019. Thereafter, the executing court executed sale deed in favour of the petitioner herein on 30.08.2018 vide document No.8068 of 2018. Thereafter, the petitioner has filed another execution petition in E.P.No.634 of 2018 for possession and the same was allowed on 28.08.2019.

5. The first respondent filed a suit in O.S.No.194 of 2019 for partition, stating that the total area belonging to the first respondent and her mother to an extent of 2.02 Acres and the sale is made only to an extent of Acre 1.87 cents and therefore, she is entitled to 0.77 cents and the same has to be partitioned. However, in the written statement filed by her in O.S.No.424 of 1988, she has stated the above said contention. Even in the sale agreement also, which is subject matter of the suit in O.S.No.424 of 1988, she has not stated that the total extent of land is 2.02 cents and out of the same 1.87 cents only was agreed to be sold. Therefore,

the present suit in O.S.No.94 of 2020 filed by the first respondent is vexatious, without cause of action and it is only an abuse of process of the court and the same is liable to be struck off.

6. Heard the learned counsel for the petitioner. I have perused the materials on record.

7. At this juncture, it is useful to extract the paragraph No.11 of the plaint in O.S.94 of 2020, filed by the first respondent/ plaintiff.

" The plaintiff submits that the first defendant herein filed an execution petition in E.P.No.634 of 2018 on the file of the II Additional Subordinate Judge, Coimbatore for execution of sale deed with regard to 1/3 share namely 62 3/4 cents in 1.87 acres out of total 2.02 acres. But as per Trial Court judgment and decree, the plaintiff is entitled for 1/2 share in the suit property. Hence, ignoring the objections by the plaintiff, the Subordinate Judge on 30.08.2018 executed sale deed on behalf of plaintiffs herein in favour of 1st defendant in respect of 1/3 share. On the other hand, the plaintiff is entitled to 1/2 share namely 93.875 cents. After deducting 62.75 cents from 93.875 cents, the plaintiff is entitled to the remaining 31.125 cents. At this juncture, plaintiff's mother on 27.11.2003 had executed a Will bequeathing here entire right in 2.02 acres in favour of the plaintiff. The plaintiff submits that apart from 1.87 3/4 acres, the plaintiff's mother was owner of 15 cents from S.F.No.331/1 which is clearly mentioned in the Will. Hence, the plaintiff, after deducting 1.25 cents out of 2.02 acres, is entitled to 77 cents. "

7. From the above contentions raised by the plaintiff/1st respondent, it is clear that the entire issue to be determined in the suit is with regard to the extent of the property and the same shall be decided only at the time of disposing the suit, after perusing all the oral and documentary evidence adduced by both the parties. Thus, there is no force in the contentions of the revision petitioner to struck of the plaint. Therefore, the civil revision petition is devoid of merits and the same is liable to be dismissed.

8. At this juncture, the learned counsel appearing for the petitioner seeks for a direction to the court below to dispose of the suit, within a time frame, as stipulated by this court.

9. In the light of the above said submissions, this court directs the District Munsif, Coimbatore to dispose the suit in O.S.No.94 of 2020, as early as possible, within a period of 8 months from the date of receipt of this order, if there is no legal impediment.

10. With the above direction, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

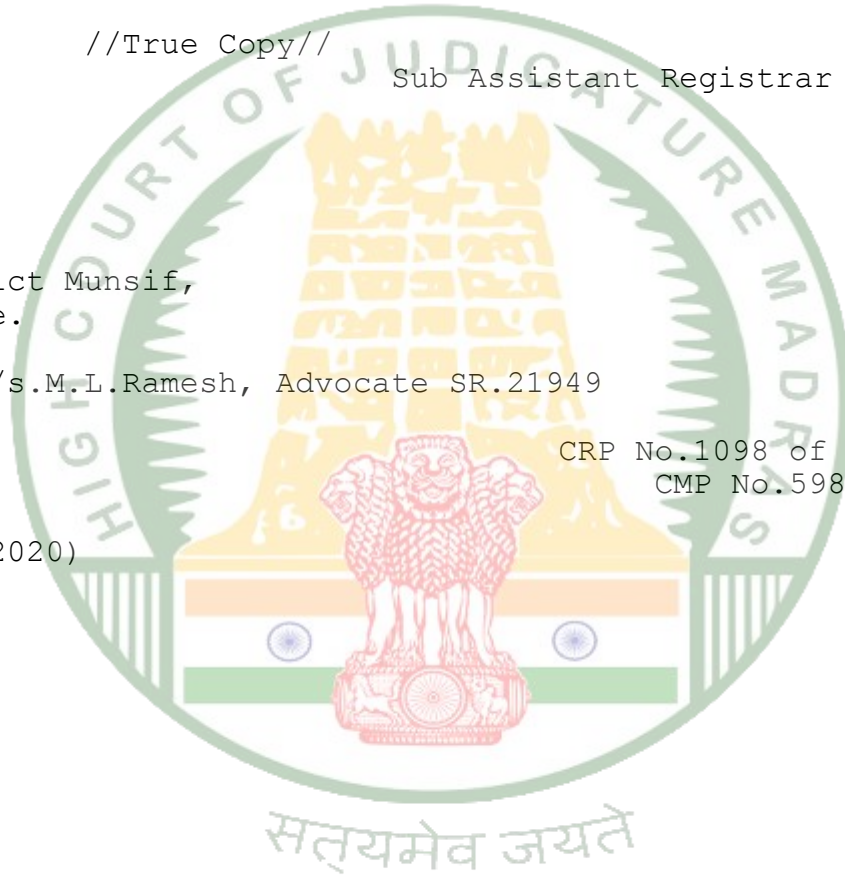
To

The District Munsif,
Coimbatore.

+1cc to M/s.M.L.Ramesh, Advocate SR.21949

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CMP No.5986 of 2020

CP (CO)
CB(21/09/2020)



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