



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11.03.2021

CORAM:

WEB COPY

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD)No.350 of 2019

and

C.M.P.No.2492 of 2019

1.Loritta Gnanaraj

...Petitioner

2. N. Swarnalatha Vanaja

Vs

1.Amroos Hassan

2.Talib Hassan

3.Arul Gnanaraj

4.Y.S.Nelson

5.Chellammal

6.Gowrilakshmi

7.Dellibai

8.Puspha

9.Sathya

10.Indhumathi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed by the trial Court dated 18.12.2018 in I.A.No.1352 of 2018 in O.S.No.77 of 2014 on the file of the District Munsif Court at Thiruvottiyur.

For Petitioner : Mr.A.Balasigh Ramanujam

For Respondents: Mr.Inamdar Ameenur Rahman

for R1 & R2

No appearance for R3 to R10

O R D E R

The limited prayer sought for in the present petition is to set aside the fair and decreetal order passed by the trial Court dated 18.12.2018 in I.A.No.1352 of 2018 in O.S.No.77 of 2014 on the file of the District Munsif Court at Thiruvottiyur.

2. The first and second respondents herein had filed the suit in O.S.No.77 of 2014 for the following reliefs:

(i) For declaration declaring that the sale deeds vide Doc.No.1830 of 1992 dated 27.03.1992 on the file of the S.R.O. Sembium, Madras executed by the defendants No.5 to 10 infavour of the third defendant is null and void, void abinitio and not binding on the plaintiffs.



(ii) For declaration declaring that the sale deed vide Doc.No.1831 of 1992 dated 27.03.1992 on the file of the S.R.O. Sembium, Madras executed by the defendants No.5 to 10 infavour of the first Defendant is null and void, void ab-initio and not binding on the plaintiffs.

(iii) For permanent injunction restraining the defendants, their men, agents, servants or anybody who is claiming or under them, from any way interfering with the plaintiff's peaceful possession and enjoyments over the suit schedule "A" and "B" properties morefully described schedule hereunder.

3. The plaintiffs/first and second respondents submitted that they have also filed a suit against the petitioner for the relief of permanent injunction in O.S.No.25 of 2004 and the same is pending. It is further submitted that yet another suit was also filed by them against the plaintiffs for permanent injunction in O.S.No.76 of 2014, which is also pending. It was further contended that since all the three suits are connected each other, they prayed to order joint trial in all the three cases in a common evidence. As against the same, the petitioner herein had filed I.A.No.1352 of 2018 to set aside the ex-parte order dated 14.11.2018 passed against the petitioner in O.S.No.77 of 2014.

4. The learned counsel for the petitioner would submit that the trial Court failed to consider the pendency of the Transfer O.P.No.339 of 2018, while dismissing the interlocutory application and having received the memo from the counsel about the transfer petition pending before the Appellate Court, the trial Court ought not to have dismissed the interlocutory application. The learned counsel further submitted that the application to set aside the exparte order under order IX Rule 7 can be filed at any time and the trial Court miserably failed in considering the same while dismissing the application. It is the further contention of the learned counsel that the trial Court passed the order by exceeding its authority, despite knowing the fact that the Transfer O.P., is pending before the Appellate Court and the transfer O.P., is filed only for the allegation leveled against the judicial office that he is showing some personal interest. Hence, the learned counsel prays to allow this petition.

5. Heard the learned counsel for the petitioner and the learned counsel for the first and second respondents and perused the materials available on record.

6. This Court, by an order dated 01.02.2019, had granted an order of interim stay stating that the rejection of the petitioner's application by the trial Court may not be proper, when the petitioner had filed the set aside application within



the time limit. This Court is also of the view that the trial Court ought to have considered the pendency of the Transfer O.P., and without doing so, the trial Court dismissed the application, which is not justifiable. It is also seen from the adjudication orders that the said suit was of the year 2014 and the defendants were set ex-parte, since there was no representation for them and the matter was posted on several occasions, without any progress. Hence, it would be appropriate to direct the District Munsif Court at Thiruvottiyur to complete the trial in O.S.No.77 of 2014, within a period of one year from the date of receipt of a copy of this order.

7. Accordingly the present civil revision petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

sbn

To

The District Munsif Court, Thiruvottiyur.

+2 Ccs to Mr.Inamdar Ameenur Rahman, Advocate sr 15488.

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and
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SS(CO)
SP(19/07/2021)