

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order <u>29.09.2021</u>	Date of Pronouncing Order 02.11.2021
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CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)No.266 of 2021

and

CMP.No.2498 of 2021

1. Nitin V Patel
2. Shankarlal B Patel
3. S.Kalyani
4. M/s. Southern Television Pvt. Limited,
Represented by its Director R.N.Damani,
Shop No.6, Ground Floor, Rayala Towers,
No.781 to 785, Anna Salai, Ch 02, Presently at
19(8), Rajaranthinam Street, Kilpauk,
Chennai- 600 010. ...Petitioners

Versus

Mr.James Peter ...Respondent .

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed on 13.03.2020 in I.A.No.21 of 2018 in O.S.NO.145 of 2017 on the file of the Subordinate Judge at Ponneri.

For Petitioner : Mr.V.Ramesh for
Mr.J.D.Srikanth Varma

For R1 to R3 : Mr.E.Prabhu

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.21 of 2018 in O.S.No.145 of 2017 on the file of the Subordinate Judge at Ponneri on 13.03.2020.

2. The learned counsel for the petitioners submitted that the respondent filed the suit in O.S.No145 of 2017 on the file of Subordinate Judge Ponneri, seeking the prayer for declaration that Ratification Deed dated 19.08.2015 executed by third defendant as power agent of defendants 1 and 2 in favour of 4th defendant in respect of the schedule mentioned land and registered as document No.7897 of 2015 with SRO, Redhills is not valid and not binding on the plaintiff. The schedule property i.e., the suit property are:.

i) To an extent of 0.19.0 Ares in Survey No.192/3

ii) To an extent of 0.23.5 Ares in Survey No.192/4

situated at Puzhal Village, Madhavaram Taluk, Tiruvallur District.

3. The case of the petitioners is that the respondent has no right in these properties. These properties originally belong to one Annapoorani Ammal. She sold the properties to one Sarasa on 21.06.1982. Sarasa in turn sold the properties to petitioners 1 and 2 on 19.11.1995. Late E.Doss @ Shanmugadoss, father of respondent occupied a vacant tarisu land situated at Puzhal to create some documents. He executed Power of Attorney in favour of Mr.Gajendran to create some evidence wherein it is stated that he purchased the property measuring 1.10 acres comprised in Survey Nos. 190/1 and 190/3 from Mr. Loganathan and another. There is no such entries in encumbrance certificate with regard to this alleged purchase. He fraudulently mentioned the Survey Nos.192/3 and 192/4 referring it, as per field measurement. He cancelled this Power of Attorney by mentioning the petitioners' survey number and stopped indicating the survey No.190/1 and 190/3. Thereafter, he executed a fresh settlement deed in favour of his son/respondent Mr. James Peter in respect of survey Nos.190/1 and 190/3. Petitioners 1 and 2 filed the suit in O.S.No.49 of 2006 for the relief of permanent injunction against the respondent's father in respect of survey Nos. 192/3 and 192/4. During the pendency of O.S.No.49/2006 Mr. James Peter converted petitioners' property into various unapproved housing plots and sold it to various third parties. Petitioners 1 and 2 executed Power of Attorney in favour of third petitioner. Respondent and his

family members fabricated various documents and induced the petitioners to enter into compromise. The respondent made the petitioners to believe that documents i.e., settlement deed executed by his mother, consent settlement deed executed by his siblings, Patta, Chitta and Adangal, un-registered letters given by Sarasa are true. There is bonafide dispute in the survey number and his father E.Doss is not the owner of property in survey Nos. 192/3 and 192/4 and Mrs.Sarasa was the owner of adjacent land in survey No.192/1 and 192/2. Believing his representation, petitioners entered into a compromise with respondent and his family members on 29.04.2013 and O.S.No.49 of 2006 was dismissed as not pressed as per the compromise on 17.06.2013.

4. Subsequently, petitioners 1 and 2 sold the property in survey Nos. 192/1 and 192/2 to the 4th petitioner on 06.09.2013. Then, the fourth petitioner applied for patta. During the patta enquiry proceedings it was revealed that:

"[a] that the property measuring an extent of 1 acre in survey numbers 192/1 and 192/2 was originally owned by Mrs. Ameena Bai and after sale transactions, the property was finally sold to Siva Visnu Nagar".

"[b] it is true that the property measuring an extent of 1 acre and 5 cents in survey numbers 192/2 and 192/4 was

originally owned by Mrs. Annapoorani Ammal and by several transactions; the 2nd and 3rd petitioners purchased the property"

"[c] that the respondent sold the property in survey numbers 192/3 and 192/4 to various third parties by way of unapproved layout without having any title".

"[d] that either the respondent or his father is having any title towards the property measuring an extent of acre 1.05 cents comprised in survey numbers 192/3 and 192/4."

Thereafter, the 3rd petitioner executed the Rectification Deed in favour of the 4th petitioner. Challenging the said Rectification Deed, the respondent filed a suit.

5. The learned counsel for the petitioners further submitted that neither the respondent nor his father has any right in properties in survey Nos.192/3 and 192/4. They have not produced any title document in the name of respondent's father E.Doss @ Shanmugadoss to show his title to the suit properties or long possession as alleged in the plaint. They encroached tarisu land and taking advantage of the encroachment of Tarisu land, now created

fraudulent documents in respect of patta land. The suit properties originally belong to Annapoorani Ammal. She sold it to Sarasa and Sarasa sold to petitioners 1 and 2 and now 4th petitioner is the rightful owner. The respondent has no title or interest in the suit properties and therefore, he has no cause of action to file this suit. The petitioners filed I.A.No.21 of 2018 for rejection of plaint. Without considering the contentions of the petitioners, the petition came to be dismissed. Therefore, this petition is filed challenging the order dated 13.03.2020 passed in I.A.No.21 of 2018.

6. On coming to know the fraud committed by the respondent, the petitioners filed I.A.No. 301 of 2016 in OS.No.49 of 2006 under Order 43 Rule 1(A) r/w 151 C.P.C., to recall the compromise decree and judgment dated 17.06.2013. After hearing both sides, the learned Sub Judge, Ponneri allowed the petition and recalled the decree and judgment dated 17.06.2013 and ordered proceedings in O.S.No.49 of 2006 to be re-opened.

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7. The learned counsel for the petitioners relied on the following judgments for the proposition that if the plaint is manifestly vexatious and merit less, the Trial Court should exercise its power under Order VII Rule 11 of Civil Procedure Code.

- i) ***K. Akbar Ali Vs. K. Umar Khan & Others*** in *Special Leave Petition (Civil) No.31844 of 2018*,
- ii) ***N. A. Chinnasamy and Another Vs. S.Vellingirinathan*** reported in 2013 (6) CTC 809 Article 227,
- iii) ***Poppat Jamal And Sons Rep. By its... Vs. N. M. Venkatachalapathy @ Babulal*** Reported in 2007 (1) CTC 251,
- iv) ***A. Sreedevi Vs. Vicharapu Ramakrishna Gowd*** reported in 2006 (1) MLJ 116,
- v) ***Colonel Shrawan Kumar Jaipuriyar @ Sarwan Kumar Jaipuriyar Vs. Krishna Nandan Singh and Another*** in SLP (Civil) No.9233 of 2017,
- vi) ***T. Arivanadham Vs. Satyapal and another*** reported in 1977 Supreme Court 2421,

Referring to the judgment in ***ITC Vs. Debts Recovery Appellate Tribunal*** reported in ***AIR 1998 SC 634***, it is submitted that clear drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. It is further submitted that the provisions of Order VII Rule 11 are not exhaustive and the Court has inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court. Drawing reference to the

Judgment reported in 2006 (5) CTC 251 it is highlighted that if the plaintiff has not approached the Court with clean hands and is guilty of fraud, suppression of facts and mis-representation, he is not entitled for any relief.

8. It is further submitted that when there is no subsisting cause of action for seeking the relief sought for in the plaint, the plaint ought to have been rejected. The fraud played by the respondent was manifested before the Court. However, without considering the submissions of the petitioners, this petition was dismissed. That has to be set right now.

9. In response, learned counsel for the respondent submitted that the suit properties in survey Nos.192/3 and 192/4 are ancestral properties of the respondent. The respondent's father was cultivating the lands. He had executed settlement deed on 02.02.2006. He had wrongly mentioned survey No.190/1 instead of survey No.192/4. Survey No.190/1 is a Government land. Patta for survey Nos.192/3 and 192/4 stand in the name of respondent's father. The respondent's father died intestate. The respondent's mother and his brother and sister have executed settlement deed in his favour on 11.12.2009 and 04.02.2011 respectively. Thus respondent became the absolute owner of suit properties. Petitioners filed O.S.NO.49 of 2006 alleging that they are the

owners of the suit properties. There was compromise reached between the parties and as per the compromise, this suit was dismissed. It was agreed by the petitioners that the property purchased by them are in survey No.192/1 and 192/2 and admitted that the properties in survey Nos.192/3 and 192/4 belong to respondent and his family members. Petitioners 1 and 2 sold the properties in survey Nos.192/1 and 192/2 to the 4th petitioner. The 4th petitioner purchased the properties in survey Nos.192/1 and 192/2. However, contrary to the compromise entered into between the parties in O.S.No.49 of 2006, the petitioners created a Ratification Deed dated 19.08.2015 in the sale deed in favour of 4th petitioner by deleting survey Nos.192/1 and 192/2 and including the survey Nos.192/3 and 192/4. Only under the aforesaid circumstances, the suit was filed.

10. After admitting that the properties purchased by the petitioners 1 and 2 are in survey Nos. 192/1 and 192/2 and admitting that the respondents are the owners of property in survey Nos.192/3 and 192/4, the Ratification Deed dated 19.08.2015 executed by the petitioners is not in accordance with law. The suit was filed for the relief as aforesaid. The respondent has cause of action for filing the suit and the suit was filed within the time by appropriately valuing and paying the Court fee. This suit is not barred under any law. Therefore, the

petition for rejection of plaint was rightly dismissed. He prayed for confirming the order of the learned Subordinate Judge at Ponneri and for dismissal of this Civil Revision Petition.

11. He further submitted that while considering the petitions filed under Order VII Rule 11 C.P.C., for rejection of plaint, only plaint averments and the documents filed in support of the plaint have alone to be considered. Roving enquiry as to the truth or falsity of the allegations cannot be taken at the stage of considering the rejection of plaint under Order VII Rule 11 C.P.C. In support of this proposition, he relied upon the judgment in ***Kuldeep Singh Pathania Vs Bikram Singh Jaryal reported in (2017) 5 SCC 345.***

12. Considered the rival submissions and perused the records.

13. The narration of case set out by the parties shows that there is an issue with regard to identification of the survey number of the properties purchased by the petitioners. Petitioners produced copies of the sale deeds dated 21.06.1982 and 09.11.1995. Annapoorani Ammal sold the properties in survey Nos.192/3 and 192/4 in favour of Sarasa through Sale deed dated 21.06.1982. The copy of "A" Register shows that these properties stand in the

name of Narayanan and Veeraraghavan. Narayanan and Veeraraghavan are the children of Annapoorani Ammal. Annapoorani Ammal sold the properties in survey Nos 192/3 and 192/4 to Sarasa on her behalf and on behalf of her minor children Narayanan and Veera raghavan. The petitioners 1 and 2 had purchased the properties in survey No.192/4 from Sarasa on 09.11.1995. The patta dated 25.08.2003 in respect of these properties stands in the name of the petitioners 1 and 2 are also produced. Subsequently these properties were sold to 4th petitioner on 06.09.2013. These are the documents relating to the suit properties in survey Nos.192/3 and 192/4. It is seen from the list of documents shown in the plaint that the respondent produced settlement deed dated 11.12.2009 and 04.02.2011 executed by his mother and siblings respectively in his favour. He also produced patta, chitta kist receipts, tax receipts, electricity connection certified copy and compromise decree in O.S.No.49 of 2006, Power of Attorney in favour of kalyani, sale deed dated 06.09.2013 in favour of 1st defendant/1st petitioner herein and impugned Ratification Deed.

14. Survey of the documents produced by the petitioners and the list of documents of the respondent shows that petitioners trace the title to the suit properties from FASLI 1392 and through sale deed dated 21.06.1982,

09.11.1995. The respondent has not produced any title document in favour of his father. The title document to show his possession and enjoyment are the settlement deeds executed by his mother and siblings. There is no document filed to show that his father had purchased these properties or these properties came to his possession and enjoyment by some other means. The case of the petitioners is that neither the respondent nor his father has any right in the property in survey Nos.192/3 and 192/4. Respondent's father was only occupying Government Tarisu land and he is trying to claim right in respect of nearby patta lands without any semblance of right.

15. This is a peculiar case where the petitioners are themselves not sure of the survey Numbers of the properties they purchased. The sale deed dated 21.06.1982 executed by Annapoorani Ammal in favour of Sarasa shows that she had sold the properties in Survey Nos.192/3 and 192/4. Sarasa sold the property in survey No.192/4 to petitioners 1 and 2. The petitioners produced patta stands in the name of petitioners 1 and 2. Till now there is no confusion. Petitioners 1 and 2 filed a suit in O.S.No.49 of 2006 against respondent's father. After his death, his legal heirs were impleaded as defendants in the suit. The suit was compromised. It is the contention of the respondent that petitioners agreed that they purchased the properties in survey Nos.192/1 and 192/2 and

admitted that the properties in survey Nos.192/3 and 192/4 belong to respondent. On the basis of this agreement the suit was dismissed. Subsequently they sold the properties to 4th petitioner. In the sale deed in favour of 4th petitioner dated 06.09.2013 and Power of Attorney deed in favour of the 3rd petitioner dated 05.11.2012, it has been repeatedly mentioned that the properties intended to be sold are survey Nos. 192/1 and 192/2. The survey Nos.192/3 and 192/4 are mistakenly referred.

16. However, these documents are enough to convey the message that the petitioners claim that their properties are in survey no.192/1 and 192/2. Then 4th petitioner applied for patta and only in the enquiry, they came to know that the properties in survey Nos.192/1 and 192/2 were originally owned by Mrs. Ameena Bai and after several sale transactions, they were finally sold to Siva Vishnu Nathan. Properties in survey Nos.192/3 and 192/4 originally owned by Annapoorani Ammal and the first and second petitioners purchased these properties. The respondent sold properties in Survey Nos.192/3 and 192/4 to various third parties. It is claimed that neither the respondent nor his father has any title for the properties in survey Nos.192/3 and 192/4.

17. In support of this claim, petitioners relied on the order passed by

District Registrar in letter No.11302/ 5/2018 dated 02.04.2019. This is the main document, on which the petitioners claim that the respondent or his father has no right in the properties in survey Nos.192/3 and 192/4. However this document dated 02.04.2019 has come into existence after filing suit in O.S.No.145 of 2017. Reliance on this document is objected for the reason that it has come into existence after filing of the suit and it has to be proved in the manner known to law. It is settled proposition of law that only the plaint averments and documents have to be considered while taking a decision on a petition to reject the plaint. On weighing the materials produced before this Court, prima facie it appears that the petitioners have better title than the respondent. However, in view of the fact that the petitioners entered into compromise with respondent admitting that they purchased the properties in survey Nos.192/1 and 192/2 and the properties in survey Nos.192/3 and 192/4 are not their properties the fact that the judgment in O.S.No.49 of 2006 had been recalled by the learned Subordinate Judge Ponneri in the order passed in I.A.No.301 of 2016, this Court is of the considered view that the rival contentions of the parties with regard to the claim of title and possession has to be tried and tested by examining the parties and the concerned witnesses. Only then, the real issue in controversy between the parties can be rightly adjudicated. The suit cannot be considered as frivolous or vexatious suit. The

judgments relied by the learned counsel for the petitioners shed light as to the need for nib at bud the frivolous and vexatious suit, but they are not useful for the case of the petitioners, as the respondent has made out a case for trial. In this view of the matter, this Court finds that dismissal of the petition to reject the plaint filed in I.A.No.21 of 2018 does not require any interference and, therefore the order passed in I.A.No.21 of 2018 dated 13.03.2020 is confirmed.

18. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2021

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Index: Yes/ No
Speaking Order / Non-Speaking Order

To

The Sub Judge,
Ponneri,
Thiruvallur District.

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G.CHANDRASEKHARAN, J.,

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Pre-delivery order in
C.R.P.(PD)No.266 of 2021

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Dated: 02.11.2021