

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) Nos.742 and 743 of 2020

1. Reguraman
2. Banumathi
3. Ganesan

... Petitioners
(in C.R.P. No.742 of 2020)

1. Banumathi
2. Ganesan

... Petitioners
(in C.R.P. No.743 of 2020)

Seetharaman

... Respondent
(in both the CRPs)

सत्यमेव जयते

Prayer in C.R.P.No.742 of 2020: This Civil Revision Petition filed under Article 227 of the Constitution of India seeking for to set aside the fair and decreetal order dated 28.1.2019 in I.A No.262 of 2018 in O.S.No.178 of 2018 on the file of the Additional District Munsif cum Judicial Magistrate Mailaduthirai as confirmed in C.M.A.No.4 of 2019 dated 4.11.2019 on the file of the Additional Sub Court Mailaduthurai.

Prayer in C.R.P.No.743 of 2020: This Civil Revision Petition filed under Article 227 of the Constitution of India seeking for to set aside the fair and decreetal order dated 28.1.2019 in I.A No.372 of 2018 in

O.S.No.193 of 2018 on the file of the Additional District Munsif cum Judicial Magistrate Mailaduthirai as confirmed in C.M.A.No.5 of 2019 dated 4.11.2019 on the file of the Additional Sub Court Mailaduthurai.

For Petitioners ... Mr.V.Raghavachari

Respondents ... Mr.Seetharaman

Name printed. No

appearance

COMMON ORDER

These Civil revisions petitions are filed one in C.R.P.No.742 of 2020 against the order of the Trial Court allowing the interlocutory application in I.A. No.262 of 2018 in O.S. No.178 of 2018 filed by the respondent herein granting the relief of temporary injunction against the petitioners and another one in C.R.P.No.743 of 2020, dismissing the interlocutory application in I.A. No.372 of 2018 in O.S. No. 193 of 2018 filed by the revision petitioners praying to grant the temporary injunction against the respondent herein. Against the said orders, the revision petitioners had filed first appeals in C.M.A. Nos.4 and 5 of 2019 before the first appellate Court and the same were dismissed confirming the orders of the Trial Court. Hence, these present Civil Revision Petitions.

2. Since the issues involved in both the Civil Revision Petitions are one and the same, they are taken up together for hearing and common order is being passed.

3. The petitioners in CRP No.743 of 2020 namely, Ganesan, is the husband and Banumathi, is the wife and they have two sons by name Raguraman, being elder son who is the 1st petitioner in C.R.P.No.742 of 2020 and Seetharaman being younger son who is the respondent herein in both cases and a daughter by name Prema.

4. The case of the petitioners is that the said suit schedule property has been purchased in the name of the petitioner-husband out of his income while he was in Abroad from the year 1981 to 1998. Due to old age of the petitioner-husband, he could not maintain the said suit property and sought respondent-younger son to manage the property. Taking advantage of the same, the respondent-younger son has brought the suit schedule property under his control. Further, the respondent-

younger son has got signature from the petitioner-husband in the Will stating to avail loan for maintenance of the suit property. After executing the Will in favour of the respondent-younger son, he is claiming over the suit property and income of the suit schedule property has not been given to petitioner-father. The petitioners-husband and wife are deserted alone without any care and income by the respondent-younger son. Hence, the petitioner-father has executed a Settlement Deed in favour of his Wife to maintain the said suit schedule property. Being infuriated by the aforesaid act of the petitioner-husband, the respondent-younger son has filed the suit in O.S. No.178 of 2018 as against the petitioners and not satisfied activities of the respondent-younger son, the petitioners have filed a suit in O.S. No.193 of 2018 as against the respondent before the Additional District Munsif cum Judicial Magistrate, Mailaduthirai, seeking for permanent injunction against each other. In the meanwhile, the respondent-younger son has filed I.A. No.262 of 2018 in O.S. No.178 of 2018 and the petitioners have filed I.A. No.372 of 2018 in O.S.No.193 of 2018 seeking for temporary injunction wherein the I.A. No.262 of 2018 was allowed filed by the respondent-younger son and I.A. No.372 of 2018 was dismissed filed by the petitioners by orders

dated 28.01.2019 of the Court below. Being aggrieved by the aforesaid orders, the petitioners have filed the present Civil Revision Petitions to set aside the same.

5. The learned counsel for the petitioners would submit that when the petitioner-husband was in abroad from the year 1981 to 1998, he earned income from there. Out of the income, he has purchased 4 plots in Om-sakthi Seenusekar Street of Pattamangalam Village and with the help of his petitioner-elder son Raguraman, has constructed Aashierwaad marriage hall which has been letting out for rent. Due to old age of petitioner-father, he has sought respondent/younger son to manage the property. Having taken advantage of the old age of the petitioner-father, the respondent/younger son has not given any income derived from the marriage hall. Further, it has been stated that the respondent/younger son has got the signature from the petitioner/father in the Will by deceiving him and the same is not valid. Further, the respondent/younger son is claiming that he is entitled to the suit property by virtue of the Will. In view of the above, the petitioner-father has executed a settlement deed in favour of his wife on 8.6.2018 to supersede the Will executed by the

petitioner-father. Being infuriated by the act of the petitioner/father, the respondent/younger son has taken over the register and receipt book of the marriage hall. The same has been kept in the custody of the respondent-younger son.

6. It has been further stated by the learned counsel for the petitioner that the respondent-younger son is not having any right over the suit property alleging that the Will has been executed by the petitioner-father since when the petitioner/father is alive, the settlement deed has been executed in favour of his wife to supersede the Will which was executed earlier by the petitioner-father. Hence, the Will has become invalid. However, the I.A.No.372 of 2018 in O.S. No.193 of 2018 has been dismissed without considering the aforesaid aspect.

7. The learned counsel for the petitioners further submitted that no order of injunction can be granted as against the true owner and likewise, no injunction could be refused in favour of the person in possession and title. Hence, the suit for injunction is not maintainable in the light of the petitioner/mother being the title holder in pursuance of a Deed of

Settlement executed by the petitioner-father under Exhibit R6 and a Will of a living person is inadmissible in evidence and allowing it to be exhibited in a Court of law exhibits total non application of mind of judicial wisdom. Further, when title is deflected to the petitioner/mother without the same being challenged a suit for bare injunction is not maintainable. Hence, this Court may be pleased to set aside the orders passed by the Court below.

8.The case of the respondent is that the suit property was purchased by the respondent's father, on 19.05.2005. The respondent-younger son was in abroad during the period 1999 to 2013 and he used to sent money in the name of his parents, sister-in-law, elder brother, and his sister. Out of his income only, the suit schedule property has been purchased in the name of his Father when the respondent-younger son was in abroad.

9. It has been further stated that the respondent-younger son has started account in Bank of Baroda, Mayiladuthurai Branch and has sent more than Rs.40 Lacs. The respondent-younger son has signed in 17

cheques and the petitioner-father purchased the suit schedule property in his name and one such property is the said suit schedule property wherein the marriage hall has been constructed by name Aashierwaad and on 02.02.2015 the petitioner-father has executed a Will in favour of the respondent/younger son. Thereafter, on 27.2.2016 a family arrangement has been made where the various properties has been shared among the family members. From the year 2015, the suit property has been administered by him. The petitioners are insisting to hand over the suit property to them and the same was resisted by the respondent herein. Hence the respondent-younger son has filed I.A. No.262 of 2018 in O.S. No.178 of 2018 seeking for temporary injunction which has been allowed by the Court below.

10. The Trial Court, after considering the averments made by both parties, by its order dated 28.01.2019, granted temporary injunction in I.A.No.262 of 2018 in O.S.No.178 of 2018 restraining the petitioners herein from evicting the respondent herein from the suit property and dismissed the interlocutory application filed by the petitioners herein in I.A.No.372 of 2018 in O.S.No.193 of 2018 for temporary injunction after

coming to the conclusion that the respondent-younger son is in possession and enjoyment of the suit properties based on the Will, dated 02.02.2015 executed by the petitioner-father herein and the same has been admitted by the petitioners herein. Further it has been held that whether the respondent is a care taker of the suit property or the Will given in favour of the respondent holds good as on date can be decided only in the course of Trial by appreciating oral and documentary evidence on either side.

11. Against the said order, the revision petitioners filed first appeals before the first appellate Court and the first appellate Court by its order dated 4.11.2019 made in C.M.A.No.4 of 2019 and C.M.A.No.5 of 2019, had confirmed the orders of the trial Court holding that whether the suit property was purchased by the son or father has to be considered only after adducing the evidence and as the respondent herein has been taking care of the suit property, the balance of convenience is in his favour and dismissed the first appeals. The first appellate Court had also directed the trial Court to complete the suit proceedings within four months.

12. Heard the learned counsel for the petitioners. Despite name of the respondent printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

13. On a perusal of the records, it is seen that the petitioners had not proved their possession. However, at present the respondent-younger son is in possession and maintaining the suit property which is admitted by the petitioners herein. In view of the Will executed in favour of the respondent-younger son and he is at present in possession of the suit schedule property and maintaining the same which are admitted by the petitioners, the Court below has come to the conclusion that the respondent is in possession and granted temporary injunction in I.A.No.262 of 2018 in O.S.No.178 of 2018 restraining the petitioners herein from evicting the respondent herein from the suit property.

14. However, it is to be considered that the title deed stands in the name of the petitioner-father and he has also executed the settlement deed in favour of his wife. But, only based on the Will, the possession has been

taken by the younger son/respondent herein who has filed the Original Suit in O.S. No.178 of 2018 seeking for permanent injunction and further interlocutory application in I.A. No.262 of 2018 for temporary injunction restraining the parents to enjoy the suit property.

15. It is also made clear that injunction cannot be granted as against the true owner of the property, even who has alleged to have executed the Will in favour of the respondent-younger son, the Will come into effect only after the death of the concerned person. Further, the petitioner-father herein is the original purchaser of the suit property and he has executed a Settlement Deed Ex.P6 in his wife favour. It is to be considered that even the respondent has got right over the same by virtue of Will dated 02.02.2015, he has to establish the validity of the Will, as the Executor of the Will is very much alive. Further, as the said Will come into effect only after the death of the person who has executed the said Will, the Court below has erroneously granted temporary injunction against the true owners. However, by setting aside the orders of the Court below, it would not serve any purpose. Hence, at this point of time, it is necessary to be known about the title of the suit schedule property for

which the Court below is directed to proceed with the proceedings of the suit by commencing the Trial day to-day basis without any further delay and dispose of the same as directed by the first appellate Court in accordance with law after having considered the suits are the year of 2018 and in the interest of parents, who are at the fag end of their life.

16. As the father and mother are left in lurch by the younger son/respondent herein due to the property dispute, they should not be harassed any more by younger son/respondent herein.

17. In the result, these Civil Revision petitions are disposed of with the above directions. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

18.03.2021

Lbm

Index: Yes/No.
Speaking/Non-Speaking order
Internet: Yes/No.

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To:

1. The Additional District Munsif cum
Judicial Magistrate Mailaduthirai

2.The Additional Sub Court
Mailaduthurai.

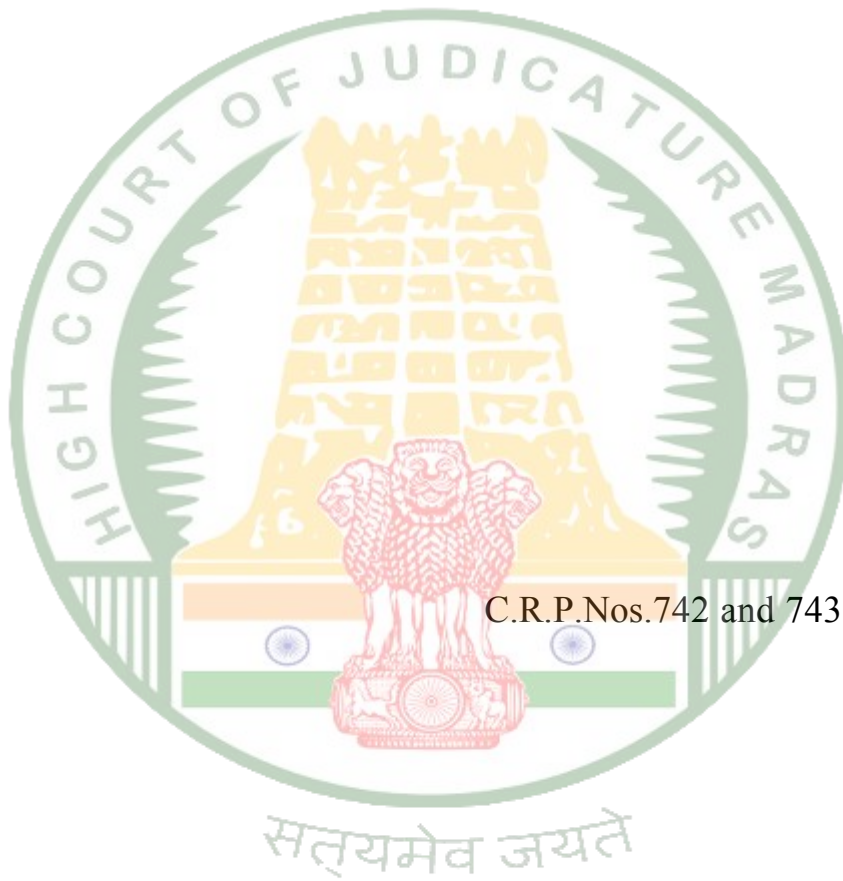


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V.BHAVANI SUBBAROYAN, J.,

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