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CRP.(PD).No.607/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(PD).No.607/2019 and CMP.No.4095/2019

[Video Conferencing]

Perumal

.. Petitioner

Vs.

1.Deepa

2.Minor Naveen

3.Minor Praveen

Minor Petitioners 2 & 3

represented by their Mother and

Natural Guardian the 1st petitioner

herein Mrs.Deepa.

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order of the learned Principal Subordinate Judge, Thindivanam made in C.M.A.No.10/2015 dated 03.09.2018 in reversing the order of the learned District Munsif, Vanur made in I.A.No.334/2015 in O.S.No.67/2015 dated 21.08.2015.

For Petitioner : Mr.M.R.Thangavel

For Respondents : Mr.K.MyilSamy

ORDER

(1) This Civil Revision Petition is directed against the order passed in CMA.No.10/2015 dated 03.09.2018 by the Principal Sub-Court, Thindivanam.



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(2) Brief facts that are necessary for disposal of this Civil Revision Petition are as follows:

(3) The revision petitioner as plaintiff filed a Suit in O.S.No.67/2015 for specific performance of an Agreement of Sale dated 22.01.2004 and for consequential permanent injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the Suit property.

(4) It is the case of the revision petitioner/plaintiff in the Plaint that the revision petitioner/plaintiff was a tenant in respect of the Suit property under one Thiru.Venkatesan, the husband of the 1st respondent. Though the revision petitioner/plaintiff also pleaded that he was in possession of the property as a tenant, pursuant to the alleged Agreement of Sale, dated 23.09.2004, it is stated by the revision petitioner/plaintiff that the revision petitioner/plaintiff became the owner of the property and as such, he is entitled to be in possession and enjoyment of the Suit property in exercise of his right of ownership.

(5) The revision petitioner/plaintiff admitted that the Suit is filed after the death of Thiru.Venkatesan, the original owner, who is the



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husband of the 1st respondent in the Civil Revision Petition. Therefore, the legal representatives of the original owner are arrayed as respondents/defendants under whom the revision petitioner/plaintiff does not plead any tenancy right.

- (6) It is important to note that it is not the case of the revision petitioner/plaintiff that he is in possession and enjoyment of the Suit property as a tenant pursuant to the alleged Agreement of Sale dated 23.09.2004. The respondents who are defendants in the Suit filed a written statement specifically denying the existence or truth, or execution of the Agreement dated 23.09.2004. During the pendency of the Suit, the petitioner filed an application in I.A.No.335/2015 for grant of an interim injunction restraining the respondents/defendants herein from interfering with the peaceful possession and enjoyment of the Suit property by the petitioner.
- (7) The Trial Court took a view that the validity of the undertaking letter can be decided at the time of trial. However, the Trial Court held that the revision petitioner/plaintiff is in possession of the property as a tenant and that therefore, he has got a *prima facie* case. The Trial Court further held that balance of convenience lies



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in favour of the revision petitioner/plaintiff. Aggrieved by findings of the Trial Court, the respondents/defendants filed CMA.No.10/2015 and the Principal Sub-Court, Thindivanam allowed the appeal as the revision petitioner's possession based on the unregistered Sale Agreement, cannot be protected under Section 53(A) of the Transfer Property Act, since, the agreement itself was executed after the amendment in the year, 2001. The revision petitioner/plaintiff as an agreement holder is not entitled to any protection under Section 53(A) of the Transfer of Property Act. The revision petitioner/plaintiff in the present Suit has prayed for specific performance under the premise that he is in possession pursuant to the Agreement of Sale.

- (8) In such circumstances, the question is not whether the revision petitioner/plaintiff is entitled to be in possession as a tenant but whether the revision petitioner/plaintiff is entitled to protect his possession as an agreement holder. The Appellate Court is therefore, right in holding that the petitioner is not entitled to seek injunction on the basis of an unregistered Sale Agreement. As rightly pointed out by the Trial Court, the petitioner has not



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pleaded the continuance of tenancy after the agreement but based his relief on the basis of an unregistered Agreement of Sale and as such, he cannot succeed in getting an order of injunction. The alleged Agreement of Sale was dated 23.09.2004, however the Suit itself is filed in the year, 2015. Therefore, the Suit was laid after the period of limitation prescribed for filing the Suit for specific performance.

- (9) Learned counsel appearing for the revision petitioner/plaintiff submitted that the revision petitioner/plaintiff is in possession of the property and that therefore, he cannot be evicted without due process of law. It is further stated that the respondents/defendants have admitted the petitioner's possession and therefore the revision petitioner/plaintiff is entitled to get an order of interim injunction. It is well settled that no injunction can be granted against the owner of the property. The petitioner's claim is based on an Agreement of Sale and the relief claimed is for specific performance. Agreement of Sale can not create any right in immovable property. However, the revision petitioner/plaintiff has unfortunately gave up his plea of tenancy by a specific pleading that his possession is on the basis



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of an Agreement of Sale. Though the revision petitioner/plaintiff claims larger relief, it should be established that he is in lawful possession of the property. It is admitted that the Suit property belongs to the respondents/defendants after the death of Thiru.Venkatesan.

- (10) The Suit for specific performance is barred by limitation and this Court is unable to find any valid reason to save the Suit from limitation from the paragraph relating to the cause of action. It is admitted, that the agreement is unregistered and therefore, the petitioner is not entitled to get the protection of Section 53(A) of the Transfer of Property Act. Assuming that the revision petitioner/plaintiff is in possession of property he is not entitled to protect his possession.
- (11) In the Suit for specific performance, the petitioner's prayer for interim injunction is discretionary. This Court is unable to find any legal basis to consider the petitioner as a person who is either in lawful possession or entitled to be in possession on the basis of an unregistered document the truth and genuineness of which are disputed.



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In the result, the Civil Revision Petition is **dismissed** confirming the order of the learned Principal Subordinate Judge in CMA.No.10/2015 dated 03.09.2018 in reversing the order of the learned District Munsif, Vanur made in I.A.No.334/2015 in O.S.No.67/2015 dated 21.08.2015. No costs. Consequently, connected Civil Miscellaneous Petition is closed. However, the suit may be disposed of on merits uninfluenced by any of the observations made in this order.

07.12.2021

cda

Internet : Yes

To

- 1.The Principal Subordinate Judge, Thindivanam.
- 2.The District Munsif, Vanur.



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S.S.SUNDAR, J.,

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