

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)No.3709 of 2015
and
Contempt P.No.1161 of 2017

1. Nasreen Mohideen
2. K.A.M.Wasif (deceased)
3. Lubnasyed

... Petitioners in
both cases

Vs.

1. Thahnoon
2. A.Mohamed Kasim Anees

... Respondents in
both cases

Prayer in C.R.P.No.3709 of 2015 :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 06.07.2015 passed in C.M.A.No.4 of 2015 in I.A.No.1370 of 2014 in O.S.No.592 of 2014 on the file of the learned Additional Subordinate Judge, Chengalpattu.

Prayer in Cont.P.No.1161 of 2017 :- Contempt Petition filed under 11 of the Contempt of Courts Act, 1971, to punish the respondents for wilfully disobeying the order made in M.P.No.1 of 2015 in C.R.P(PD).No.3709 of 2015 dated 21.09.2015 passed by this Court.

For Petitioners
in both cases : Mr.V.K.Sathiamurthy

For Respondents
in both cases : Mr.Abrar Mohammed Abdullah

COMMON ORDER

The main Civil Revision Petition is directed as against the fair and decretal order dated 06.07.2015 passed by the learned Additional Subordinate Judge, Chengalpattu in C.M.A.No.4 of 2015 in I.A.No.1370 of 2014 in O.S.No.592 of 2014, thereby confirming the order dated 13.02.2015 passed in I.A.No.1370 of 2014 by the learned District Munsif, Chengalpattu.

2. The petitioners are the plaintiffs. They filed the suit in O.S.No.592 of 2014 as against the respondents for declaration declaring that the sale deed executed by K.K.Mohideed through his power of attorney viz., Syed Ibrahim in favour of the respondents herein as null and void. While pending the suit the petitioners filed petition for interim injunction restraining the respondents herein from alienate the suit schedule property. Though initially interim injunction was granted in favour of the petitioners, thereafter it was vacated and the said petition was dismissed. Aggrieved by

the same, the petitioners filed an appeal in C.M.A.No.4 of 2015 before the learned Additional Subordinate Judge, Chengalpattu and the same was also dismissed by an order dated 06.07.2015, against which the present Civil Revision Petition has been filed.

3. While admitting the Civil Revision Petition, this Court granted interim injunction on 21.09.2015 in M.P.No.1 of 2015. It is alleged by the petitioners that the respondents violated the order of this Court as such they filed contempt petition in Cont.P.No.1161 of 2017 to punish the respondents for disobeying the order passed by this Court.

4. The learned counsel appearing for the petitioners in both cases would submit that after filing the suit, the document No.6245 of 2005 has been rectified in the year 2014, that too after death of their vendor viz., K.K.Mohaideen. The declaratory affidavit made by the respondents herein is only after filing the suit and the same was registered as Doc No.61 of 2014 on 17.09.2014. He further submitted that the sale deed was rectified by the respondents only on 17.09.2014 that too after filing of the suit. No

partition was effected between K.K.Mohaideen and K.M.Mohaideen and there is no proof regarding the same except the declaratory statement filed by the respondents. Therefore, the interim injunction necessary to be granted or otherwise the entire property will be encumbered in future. Therefore he prayed to allow this revision petition.

5. Per contra, the learned counsel appearing for the respondents submitted that the suit property was purchased by Khaja Ahamed Mohideen on 02.11.1931 vide document No.1162/1931 in the office of Sub Registrar, Thiruporur. He died in the year 1955 leaving behind his two sons viz., K.K.Mohideen and K.M.Mohideen as his legal heirs. Thereafter they partitioned the properties among themselves under Muslim Law and the suit property was allotted to the share of K.K.Mohideen. After partition K.K.Mohideen was in absolute possession and enjoyment of the entire suit property. In fact, the entire revenue records mutated in his name including patta.

5.1. While being so, the said K.K.Mohideen approached the

respondents and offered to sell the suit property. He also executed power of attorney in favour of the brother of the second respondent herein. Thereafter on the strength of the power of attorney, he executed the sale deed on 20.09.2005 vide registered document No.6245 of 2005 in the office of the Sub Registrar, Thiruporur, in favour of the respondents herein for valid sale consideration. Thereafter all the revenue documents were mutated in their names and they are in possession and enjoyment of the same. In fact in the power of attorney document, the said K.M.Mohideen also signed as witness as such he had knowledge about the power of attorney and the sale deed in respect of the suit property. Therefore, the petitioners filed vexatious suit only to grab the property and also sought for interim injunction. He further submitted that now the suit property sold out to various third parties and no other purchasers have been impleaded as party to the suit proceeding.

6. Heard Mr. V.K.Sathiamurthy, learned counsel appearing for the petitioners and Mr.Abrar Mohammed Abdullah, learned counsel appearing for the respondents in both cases.

7. The suit is filed by the petitioners for declaration declaring that

the sale deed dated 20.09.2005 registered vide Document No.6245 of 2005 as null and void. While pending the suit, the petitioners filed interim injunction petition, restraining the respondents from alienating the suit property. On perusal of written statement and the counter filed by the respondents, the second and third petitioners' father's bother viz., K.K.Mohideen had executed power of attorney in respect of the suit property in favour one Syed Ibrahim and on the strength of the power of attorney the said Syed Ibrahim executed sale deed in favour of the respondents herein. In fact in the power of attorney, the father of the second and third petitioners stood as witness to the said document and he had full knowledge about entire transactions.

8. Originally the suit property belonged to one Khaja Ahamed Mohideen and he died leaving behind his two sons as his legal heirs viz., K.K.Mohideen and K.M.Mohideen. The petitioners are the legal heirs of the said K.M.Mohideen. According to the respondents, the suit property was purchased by them from K.K.Mohideen through his power of attorney. Now the suit property has been sold out to various persons. Considering the

above facts, the Court below rightly rejected the pray of interim injunction. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below.

9. Insofar as the contempt petition is concerned, at the time of admission of the Civil Revision Petition in C.R.P.No.3709 of 2015, this Court granted interim injunction by an order dated 21.09.2015 in M.P.No.1 of 2015. Thereafter, the respondents filed petition to vacate the interim injunction in M.P.No.2 of 2015 and this Court vacated the order of interim injunction by an order dated 21.10.2016. Therefore, no contempt has been made out as against the respondents.

10. Accordingly, both the Civil Revision Petition and the Contempt petition are dismissed. Since the suit is of the year 2014, the trial Court viz., District Munsif Court, Chengalpattu, is directed to dispose the suit within a period of six months from the date of receipt of copy of this Order. It is made clear that any of the observations made by this Court would not affect the mind of the Court below while disposing the suit. There shall be no

order as to costs.

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Index : Yes/No

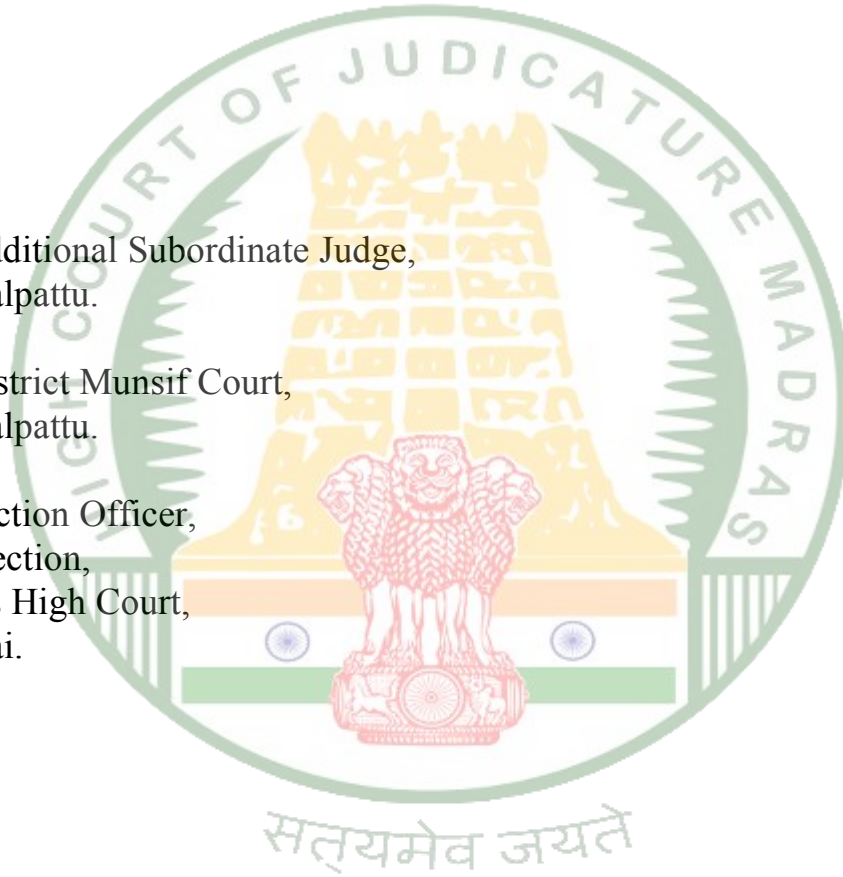
Internet : Yes/No

Speaking/Non-speaking order

rts

To

1. The Additional Subordinate Judge,
Chengalpattu.
2. The District Munsif Court,
Chengalpattu.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

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