

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM

THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA

**C.R.P. (PD) No. 2393 of 2016
and
C.M.P. No. 12347 of 2016**

G.K.Rangan

... Petitioner

-VS-

1. G.K.Parvathy
2. G.K.Halan
3. G.K.Krishnan
4. G.K.Kali
5. G.K.Nanjan

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the order and decretal order dated 25.09.2015 in C.M.A. No. 3 of 2015 on the file of the Sub Court of Nilgiris at Ootacamund partly modifying the order and decretal order dated 22.12.2014 in I.A. No. 41 of 2013 in O.S. No. 18 of 2013 on the file of the District Munsif Court, Kotagiri, The Nilgiris.

For Petitioner : Ms. K.Swetha for Mr. Srinath Sridevan

For Respondents : Ms. Priyanka for Mrs. R.Gouri (for R1)
Ms. S.Menaka (for R2 to R5)

ORDER
(The case has been heard through video conference)

The Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 25.09.2015 in C.M.A. No. 3 of 2015 on the file of the Sub Court of Nilgiris at Ootacamund partly modifying the order and decretal order dated 22.12.2014 in I.A. No. 41 of 2013 in O.S. No. 18 of 2013 on the file of the District Munsif Court, Kotagiri.

2. The parties are hereinafter referred to as per their description in the suit in O.S. No. 18 of 2013 for the sake of clarity and convenience.

3. Brief facts of the case:-

The suit in O.S. No. 18 of 2013 has been filed by the Plaintiff seeking for a declaration to declare Document No. 1206 of 1989 dated 20.10.1989 registered at Sub Registrar's Office, Kotagiri stands in favour of the First Defendant, as inoperative, sham, nominal and invalid in all aspects and to subsequently, grant permanent injunction restraining the Defendants and their men in any manner whatsoever from interfering with the peaceful possession and enjoyment of the Plaintiff in the suit scheduled property. The Plaintiff and the Defendants are siblings. The First to Third and Fifth Defendants are her

own brothers and the Fourth Defendant is her own sister. Her parents survived with her and the Defendants as their own children. Her father expired about 6 years prior to the suit and her mother expired about 1 year prior to the suit. She had been living along with her daughter Narmada in Door No. 17/66, Gathukuli Village, Nithung post, Kotagiri Taluk, The Nilgiris, which is the suit scheduled property, for the past 26 years. During the lifetime of her father, a family arrangement took place about 21 years ago and her parents convinced all the Defendants by stating that the suit scheduled property should be allotted for her exclusive ownership for her safety and security in future, since she had been deserted by her husband. Thereafter, the Plaintiff had been continuously living with her parents and all her legal and official documents stood at the above address. The First Defendant, who is her brother, ran into debts and thereby, her parents had executed a gift settlement deed registered as Document No. 1206 of 1989 at Sub Registrar's Office, Kotagiri for the purpose of enabling him to avail loan. After the demise of her parents, she had been staying in the suit scheduled property and the First Defendant continued to interfere with her right in the suit scheduled property. All the legal heirs of her father, viz., Kari Gowder, advised the First Defendant not to disturb her peaceful living in the suit scheduled property. The First Defendant kept calm for sometimes and again disturbed and threatened to dispossess her on 20.01.2013, which compelled her to give a

police complaint to Kotagiri Police Station. Since the First Defendant continued to disturb her possession, she moved O.S. No. 18 of 2013 before the District Munsif Court, Kotagiri to declare the aforesaid gift settlement deed as sham, nominal and invalid and also filed I.A. No. 41 of 2013 seeking for an ad interim injunction. The Defendants filed counter and contested the case. The Trial Court after hearing both sides granted an order of *status quo* by order dated 22.12.2014. Against that order, the Plaintiff filed C.M.A. No. 3 of 2015 before the Sub Court, Nilgiris stating that the Trial Court had not properly appreciated the evidence and documents produced before it and had come to the erroneous conclusion that the First Defendant was also in possession of the suit scheduled property and granted *status quo* in favour of the First Defendant. The Appellate Court by order dated 25.09.2015 set aside the order of *status quo* and granted an order of interim injunction against the First Defendant. Against which, the present Civil Revision Petition has been filed by the First Defendant.

4. Learned Counsel for the First Defendant would submit that the First Defendant and the Plaintiff are siblings. The parents of the First Defendant have executed a gift settlement deed dated 20.10.1989 registered as Document No. 1206 of 1989 at the Sub Registrar's Office, Kotagiri. She would further submit that based on the aforesaid gift settlement deed which is a registered

document, the First Defendant is the true owner of the entire suit scheduled property. She would further submit that the Plaintiff, who is her sister, is a permissive occupant allowed to occupy two rooms in the suit scheduled property. She would further submit that no injunction could be granted against the true owner at the instance of a person in unlawful possession. She would further submit that the Plaintiff has also not shown any *prima facie* case in support of the title which she asserts. She would further submit that the Plaintiff has not produced any document to show that there was a family arrangement by which she was allowed to be in possession of the property. She would further submit that the First Defendant, who is the brother of the Plaintiff, has graciously allowed her to stay inside the suit scheduled property and the Plaintiff is totally denying the ownership of the Petitioner, which is the subject matter of trial. She would further submit that pursuant to the order of interim injunction, the Plaintiff is trying to push out the Petitioner from the six rooms which have been occupied by him.

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5. Learned Counsel for the Plaintiff would submit that the Plaintiff and her daughter have been living in the suit scheduled property for the past 26 years. She would further submit that the First Defendant, who had been living at Coimbatore with his family till the life time of his parents, had after the

demise of his parents created problem to the Plaintiff, thereby warranting her to file the suit. She would further submit that the other Defendants, who are the siblings of the Plaintiff as well as the First Defendant, had also supported the case of the Plaintiff and the Trial Court taking into consideration the same, had granted *status quo*. She would further submit that since the order of *status quo* was fluidy in nature and thereby, finding that the First Defendant was continuing to create problem, the Plaintiff had approached the Appellate Court and the Appellate Court in order to avoid further trouble and confusion between the parties, had granted an order of interim injunction.

6. At this juncture, Learned Counsel for the Petitioner would submit that this Court by order dated 04.08.2016 had granted interim suspension of the interim injunction granted by the Appellate Court and thereafter, there had been no problem and there has been absolutely peace in between the parties. She would further submit that it is the admitted case of the Appellate Court also that the suit scheduled property is a joint family property and the First Defendant being the co-owner of the suit scheduled property as alleged by the Plaintiff, he is entitled to use the area allotted to him. In fact, the First Defendant and his family members are using 6 rooms and it is the admitted case that the Plaintiff and her daughter are using two rooms in the suit scheduled property. She would

further submit that the First Defendant undertakes that till the disposal of the suit, he will not interfere with the Plaintiff in her peaceful possession of two rooms and that the First Defendant also undertakes that he will not create any problem and thereby, she would pray that the Civil Revision Petition may be allowed by setting aside the order of Appellate Court and reviving the order of Trial Court.

7. Heard the Learned Counsels and perused the documents.

8. Admittedly, the parties are siblings. The Appellate Court has held that no evidence has been let in by the Plaintiff to prove that there was a family arrangement 13 years prior to the suit. The Appellate Court has also held that the suit scheduled property is a joint family property. If that is taken into consideration, injunction cannot be granted against the First Defendant, since it is a settled law that injunction cannot be granted against the co-owner of the property. Be that as it may, taking into consideration the relationship between the parties, the right of the First Defendant, who claims ownership of the suit scheduled property based on the gift settlement deed dated 20.10.1989 registered as Document No. 1206 of 1989 at the Sub Registrar's Office, Kotagiri, cannot be denied. Taking into consideration the undertaking given by

the Learned Counsel for the First Defendant that the First Defendant will not create any trouble or disturbance to the First Respondent Plaintiff, the order dated 25.09.2015 in C.M.A. No. 3 of 2015 is set aside and the order dated 22.12.2014 in I.A. No. 41 of 2013 in O.S. No. 18 of 2013 is restored and revived. Since the suit is of the year 2013, the District Munsif Court, Kotagiri is directed to complete the trial and render judgment within a period of nine months from the date of receipt of a copy of this order.

9. With the above direction, this Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

28.06.2021

vjt

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The District Munsif Court,
Kotagiri.
2. The Sub Court of Nilgiris,
Ootacamund.

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A.D. JAGADISH CHANDIRA, J.

vjt



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