

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.1263 of 2021

and

C.M.P.No.9908 of 2021

M.Rangaswamy

... Petitioner

Vs.

1.Ananthalakshmi

2.Sudharsan

3.Madhusri

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 28.04.2021 passed in C.M.A.No.1 of 2021 on the file of the learned Subordinate Judge, Mettupalayam and consequently confirm the fair and final order dated 10.02.2021 in I.A.No.3 of 2021 in O.S.No.15 of 2021 on the file of District Munsif Court, Mettupalayam.

For Petitioner : Mr.T.K.S.Gandhi

For Respondents 1 & 2 : M/s.K.S.Karthik Raja

ORDER

This Civil Revision Petition is filed challenging the order dated 28.04.2021 passed in C.M.A.No.1 of 2021 by the learned Subordinate

Judge, Mettupalayam confirming the fair and final order dated 10.02.2021 in I.A.No.3 of 2021 in O.S.No.15 of 2021 on the file of District Munsif Court, Mettupalayam.

2. The background for filing C.M.A.No.1 of 2021 is that the petitioner/plaintiff had filed a suit in O.S.No.15 of 2021 on the file of the District Munsif, Mettupalayam claiming himself as the owner of the suit property through the Will dated 01.11.2010 executed by his son R.Kalaiselvan that the respondent should not deal or intermeddle, alienate and encumber the suit property till the disposal of the suit and for an order of permanent injunction restraining the respondents to collect rents from the tenants. The petitioner had also filed two interlocutory applications in the above suit in I.A.No.2 & 3 of 2021 under Order 39 Rule 1 and 2 of C.P.C. seeking temporary injunction restraining the respondents from interfering with the peaceful possession of the petitioner and restraining the respondents not to collect the rent from the tenants and not to prevent the petitioner to collect the rent from the tenants, till the disposal of the suit. The said applications were resisted by the respondents.

3. The learned District Munsif, Mettupalayam, considering the rival submissions and materials produced before him, passed a common

order, whereby the relief sought for temporary injunction not to interfere with the peaceful possession of the petitioner was negated but the relief sought for restraining the respondents from interfering with the petitioner's right to collect rent from the tenants was granted.

4. As against the order passed in I.A.No.3 of 2021, the respondents have preferred C.M.A.No.1 of 2021 before the learned Subordinate Judge, Mettupalayam. The said Civil Miscellaneous Appeal was contested by the petitioner. The learned Subordinate Judge, Mettupalayam, considering the rival submissions, allowed the Appeal and set aside the order passed in I.A.No.3 of 2021 mainly on the reason that unless the Will is proved, the petitioner cannot claim right over the property on the basis of the said Will. Challenging the judgment in C.M.A.No.1 of 2021, the petitioner is before this Court.

5. The learned counsel for the petitioner submitted that the suit property was originally purchased by the petitioner. He executed a settlement deed in respect of the suit property in favour of his deceased son R.Kalaiselvan on 06.06.2003. Then his son had executed a Will dated 01.11.2010 giving life interest in favour of his father/ petitioner and mother to enjoy the rental income till their life time and to pay the debts. It is further recited that after the life time of the petitioner and

his wife, the suit property should devolve upon his wife Ananthalakshmi/first respondent and son Sudharsan/second respondent and the property should not be alienated till Sudharsan becomes major. There is also a recital that there are certain loans availed for improving this property and the loans have to be settled from the income.

6. The learned counsel for the petitioner further submitted that it is clear from the recitals in the Will that the petitioner is entitled to get the rental income till his life time. Now, his wife is no more. He has no other source of income except the rentals. However, the respondents are interfering with the collection of rents and enjoyment of the property.

7. In response, the learned counsel appearing for the respondents 1 and 2 submitted that the execution of Will was not brought to the notice of the respondents. It is only after 8 years, the Will came to the notice. There is a doubt as to the genuineness of the Will. If the Will is proved, the petitioner is entitled to receive the rent, otherwise he is not entitled to claim rents in terms of the Will. He also further submitted that though the first respondent is working as an Officer in Commercial Tax Department, she was the one to raise the

loans and repaid the loans. The learned Sub Judge has rightly considered the issue and dismissed the injunction application. Therefore, he prayed for dismissal of this Petition.

8. Considered the rival submissions and perused the records. From the narration of facts of the case and the submissions made, it is seen that certain things are not disputed. The undisputed fact is that there are 8 shops in the suit property. Out of this 8 shops, 4 shops are kept vacant and 4 shops are occupied by tenants. The petitioner is receiving rent from one tenant, namely, Charles at the rate of Rs.7,000/- per month. Three other shops are occupied by tenants and they are paying rents to the first respondent. The learned counsel appearing for the respondents 1 and 2 submitted that the respondents are willing to part with the rent from one more shop to the petitioner. The learned counsel is very specific that the first respondent is willing to part with the rent received from the adjacent shop of the tenant Charles. As already indicated, the reason for setting aside the order passed in I.A.No.3 of 2021 is that until the Will is proved, the petitioner cannot stake his claim on the basis of Will. The petitioner is an aged person and he lost his wife. The first respondent though working in

Commercial Tax Department, is a lady and it is claimed that she had availed loan for construction of the building and repaying the loans.

9. Taking note of all the above facts into account, this Court does not want to go into the merits of the case. As an interim measure this Court directs that the petitioner shall continue to receive the rent from the tenant Mr.Charles and receive the rent from the adjacent shop occupied by a tenant Charles from the month of September, 2021. If any vacant shop is leased out in future, whatever rent received, 50% of the rent has to be paid to the petitioner till the disposal of the suit. This is only an interim arrangement till the disposal of the suit, leaving the rights of the parties to be decided in the trial.

10. Considering the fact that the petitioner is a senior citizen aged about 88 years, the learned District Munsif, Mettupalayam is directed to dispose of the suit in O.S.No.15 of 2021, as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

11. With the above directions, this Civil Revision Petition stands disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

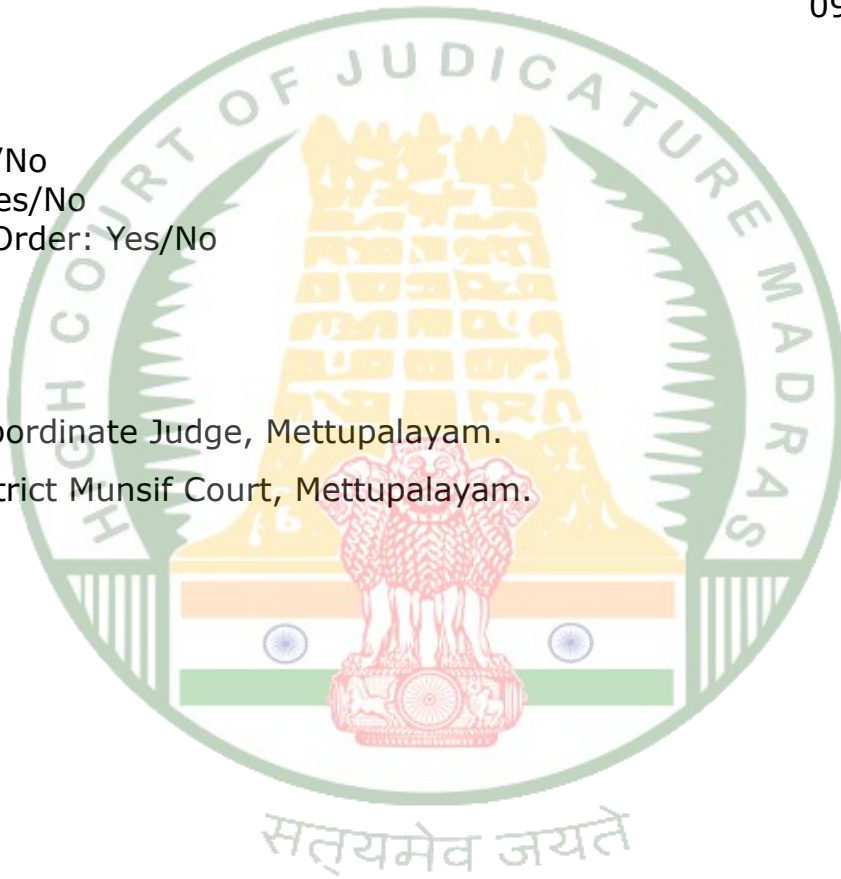
09.09.2021

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Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No

To

1. The Subordinate Judge, Mettupalayam.
2. The District Munsif Court, Mettupalayam.

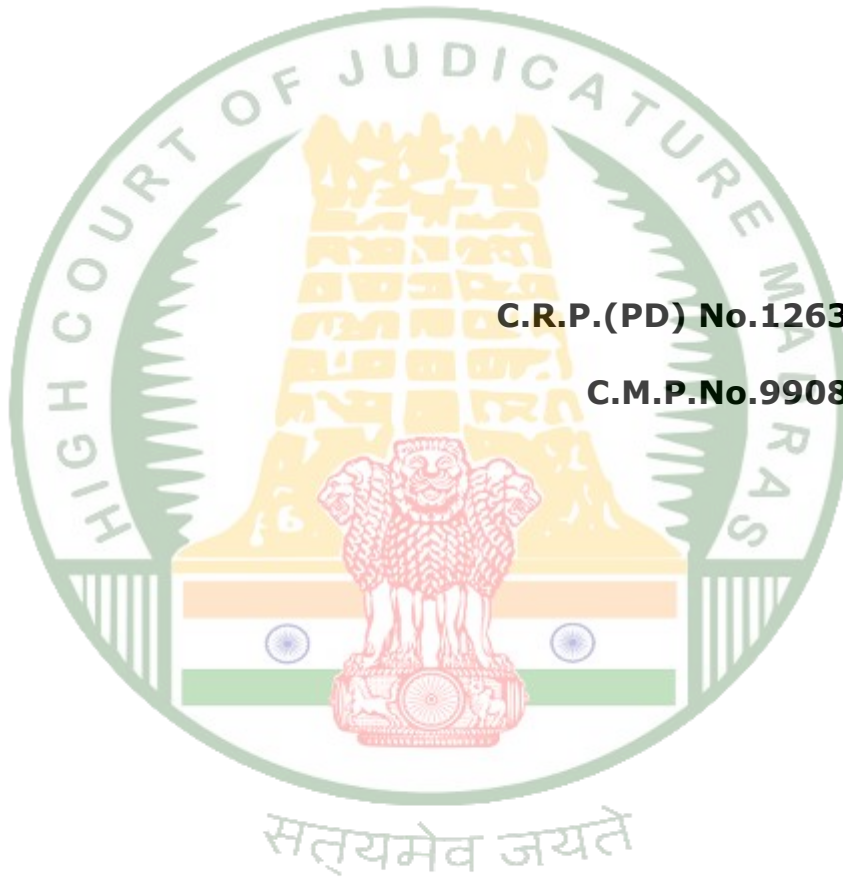


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