



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.929 of 2021

and

C.M.P. (MD) No.5250 of 2021

Sivaramalingam

.. Petitioner/Respondent/
Respondent/Defendant

-vs-

Savarimuthu

.. Respondent/Appellant/
Petitioner/Plaintiff

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 09.12.2020 of the learned Subordinate Judge, Mudukalathur made in C.M.A.No.01 of 2020 on his file reversing the order and decreetal order dated 26.06.2020 of the learned District Munsif of Mudukalathur in I.A.No.130 of 2019 in O.S.No.27 of 2019 on his file and dismiss the said civil miscellaneous appeal.

For Petitioner : Mr.K.N.Thambi
For Respondent : Mr.D.Nallathambi

ORDER

The defendant, who is the respondent in the application in I.A.No.130 of 2019, is the revision petitioner before this Court challenging the order dated 09.12.2020 of the learned Subordinate Judge, Mudukalathur made in C.M.A.No.01 of 2020 reversing the decreetal order dated 26.06.2020 of the learned District Munsif, Mudukalathur in I.A.No.130 of 2019 in O.S.No.27 of 2019.

2.The respondent/plaintiff had filed the suit in O.S.No.27 of 2019 on the file of the District Munsif, Mudukalathur for an injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property. The property in question is an extent of 97 cents of punja lands, which is comprised in S.No.256/9 of Kilaraikulam Village of Mudukalathur, Ramanathapuram, comprised within four boundaries.

3.The case of the plaintiff is that the plaintiff's father Arockiya Arulraj had taken the suit property by way of Othi on 16.09.1981 from one Namachivayam Pillai for a period of three years under a registered Othi Deed and the plaintiff would submit that at



that point of time, he was a minor. Thereafter, when he had attained majority, he has been enjoying the property to date.

4.The case of the plaintiff is that the defendant had no right or interest in the property at any point of time. However, he had started interfering with his possession and therefore, he had come forward with the suit in question.

5.The defendant's case is that the larger extent of suit property belonged to Ramasamy Pillai, who is the father of the defendant and the said Ramasamy Pillai died on 15.11.1979 leaving behind him surviving his three sons and three daughters. Two of the sons are the said Namachivayam Pillai and the defendant herein.

6.The defendant had submitted that his sisters had released the shares of their property in favour of the three brothers, viz. Sangaralingam, Namachivayam and the defendant, Sivaramalingam. Therefore, each of them are entitled to 1/3rd share in the property. The defendant's case is that joint patta had also been issued in the name of all of the three on 15.07.1974. Therefore, one of the brothers, Namachivayam had no right to create an Othi with reference to the entire extent of the property, when he had only a 1/3rd right in the same and the plaintiff cannot claim any right.

7.Pending the suit, the plaintiff had taken out an application in I.A.No.130 of 2019 seeking an ad interim injunction. This application was dismissed by the learned District Munsif, Mudukalathur. The said order was taken on challenge to the Subordinate Judge, Mudukalathur, in C.M.A.No.1 of 2020. The learned Subordinate Judge, Mudukalathur, had allowed the appeal only on the ground that the issue as to whether the plaintiff's mortgagor was entitled to only 1/3rd share or otherwise is an issue which has to be decided in the suit. Further, the plaintiff can only be evicted from the premises through due process of law. Therefore, he was entitled to an interim order of injunction. Challenging the above order, the defendant is before this court. At the time of admission, the defendant had the order of injunction stayed.

8.Mr.K.N.Thambi, learned counsel appearing on behalf of the petitioner/defendant would argue that all the three brothers were initially granted a joint patta with reference to S.No.256/9 in Patta No.1319. Thereafter, the property has been subdivided into S.No.256/9A in which, patta has been granted in favour of the defendant, who is petitioner herein in Patta No.4840. The property allotted to Namachivayam has been subdivided as S.No.256/9B and Patta No.4841 has been given to him. Likewise, the Sivaramalingam has been allotted S.No.256/9C in Patta No.4842. Therefore, he would submit that each of them are in possession of their



9.Mr.D.Nallathambi, learned counsel for the respondent/plaintiff would submit that the suit itself is ripe for trial and therefore, the *ad interim* order granted may continue till the disposal of the suit.

WEB COPY

10.Heard the learned counsel and perused the records.

11.From the records, it is clear that the property, which was originally comprised in S.No.256/9 has been subdivided and each of the owners has been allotted distinct extent of land and the survey number has also been subdivided and independent pattas were granted to them, which would clearly show that they are in possession and enjoyment of their respective shares. That apart, the learned Subordinate Judge has not considered the *prima facie* case of possession, but has proceeded on the basis that one of the co-owners has executed an Othi and the legality or otherwise of the same has to be considered in the suit. The learned Judge has failed to appreciate that the Othi is of the year 1981 and apart from the Othi Deed, no other document has been produced by the plaintiff to show *prima facie* possession of the property on the date of the suit. On the contrary, the defendants have produced pattas standing in their names.

12.In the above circumstances, this court is of the view that the order dated 09.12.2020 passed in C.M.A.No.1 of 2020 is liable to be set aside and is accordingly, set aside.

13.In the result, the Civil Revision Petition is allowed. Considering the fact that the suit is ripe for trial, the learned Subordinate Judge, Mudukalathur, shall dispose of the suit within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

abr

Note:- In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Subordinate Judge,
Mudukalathur.

2. The District Munsif,
Mudukalathur.

+1 CC to M/s.K.N.THAMPI, Advocate (SR-38258[F] dated 10/12/2021)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-38269[F] dated 10/12/2021)

C.R.P. (PD) (MD) No.929 of 2021

Dated: 09.12.2021

USK (29.12.2021) 4P 5C