



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15 .07.2021
(Reserved on 08.03.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.1684 of 2019
and
CMP(MD)No.8700 of 2019

Perumal (Died) ... Petitioner/Plaintiff
1) P.Saravanakumar
2) A.Saila
3) P.Kannan ... Petitioners 1 to 3 /
LRs of the petitioner/3rd parties

vs.

1) Subramanian
2) Subbulakshmi
3) Jeyasekara Pandiyan
4) Ponsamy
5) Bama ... Respondents/Respondents/Defendants

Prayer: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.592 of 2018 in O.S.No.92 of 2013 on the file of the Sub Court, Valliyoor, dated 01.08.2018.

For petitioners : Mr.H.Arumugam
For respondents 1 to 4 : No appearance
For 5th respondent : Mr.V.Sasikumar

ORDER

This revision petition has been filed by the legal heirs of the petitioner/plaintiff against the order dated 01.08.2018, passed in I.A.No.592 of 2018 in O.S.No.92 of 2013 on the file of the Sub Court, Valliyoor, whereby and whereunder the application filed by the petitioner/plaintiff seeking to summon the Adi-Dravidar Tahsildar to lead in evidence on his side was rejected. For better



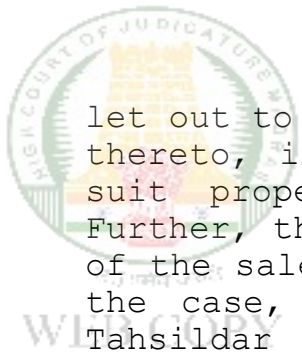
appreciation and understanding, the rank in the lower Court is taken into account.

2.The petitioner/plaintiff filed the above suit against the respondents/defendants for declaration and recovery of possession and to declare the registered sale deed dated 12.07.2007 executed by the 2nd respondent to the 1st respondent; the registered sale deed dated 04.06.2009 executed by the 1st respondent to the 4th respondent; and the registered sale deed dated 15.03.2010 executed by the 4th respondent to the 5th respondent as null and void. Pending suit, the petitioner filed the application in I.A.No.592 of 2018 to summon the Adi Dravidar Tahsildar for proving his case that on the date of the alleged sales, the possession of the suit property was with him. The Court below dismissed the said petition, against which, this revision petition is filed.

3.The learned counsel for the petitioner/plaintiff would submit that the suit property was purchased by the petitioner by a registered sale deed dated 11.03.2004 and after constructing a house, he let out the same for rent to the Adi-Dravidar Welfare Department to run Adi-Dravidar Women Hostel. To repair the suit premises, the petitioner borrowed a sum of Rs.1 lakh as loan from the 3rd respondent by executing a general power of attorney deed in favour of the 2nd respondent and a sale agreement in favour of the first respondent on the assurance that the same would be sham and nominal, but by misusing the same, the above sale deeds have been fraudulently executed. Thus, in order to establish that (a) at the time of execution of the alleged fraudulent sale deeds, the suit property was in possession of the department; (b) it was vacated only on 07.11.2008; and (c) the respondents trespassed into the suit property only on 20.06.2012, examination of Thasildar and production of his official document is necessary, but the Court below, without considering the same, has erroneously dismissed the petition. In support of his contentions, he would rely on the judgment of this Court in R.Ravi vs. I.Pandiyarajan reported in 2007 (4) CTC 133. Thus, he would pray for setting aside the impugned order.

4.The learned counsel for the 5th respondent would submit that the petitioner borrowed loan from the 3rd respondent for which he executed a power of attorney in favour of the 2nd respondent. Based on the said power deed, the 2nd respondent executed a sale deed dated 12.07.2007 in favour of the 1st respondent and thereafter, the 1st respondent executed a sale deed on 04.06.2009 in respect of the suit property in favour of the 4th respondent who in turn executed a sale deed in favour of the 5th respondent on 15.03.2010 and by virtue of the said sale, the 5th respondent has been in possession and enjoyment of the suit property and the petitioner has filed the above suit only to harass the respondents.

5.He would further submit that while the affidavit filed in
<https://hccs.courts.mf/jn/hccs/jn> application it is stated that the suit property was



let out to Adi-Dravidar Welfare Department for boys hostel, contrary thereto, in paragraph No.4 of the plaint, it is stated as if the suit property was let out to run Adi-Dravidar Women hostel. Further, the suit was filed after 6 years from the date of execution of the sale deeds. After considering the facts and circumstances of the case, the trial Court has rightly held that examination of Tahsildar to prove that the suit property was let out during the relevant point of time is not necessary, as there is no dispute as to the alleged letting out of the suit property and further, it will not in any way help to decide the suit for declaration of title and recovery of possession and therefore, the learned Judge dismissed the said Interlocutory application. Thus, he prayed to dismiss this revision petition.

6. Heard the learned counsel for the petitioner as well as the 5th respondent. Though notice served, none appeared on behalf of the respondents 1 to 4.

7. According to the petitioner, only in order to show that the suit property has been in his possession and enjoyment till 20.06.2012, the Special Tahsildar for Adi-Dravidar Welfare, Nanguneri has to be summoned and examined as additional witness on his side. A perusal of record shows that the petitioner himself stated that the Adi-Dravidar Department did not pay the rent properly and they vacated the premises on 07.11.2008 itself and thereafter, he kept the building closed and suddenly, on 20.06.2012, the respondents 1 to 3 trespassed into the suit property. It would clearly shows that even if the additional witness is permitted to be examined, that would not prove the possession of the petitioner till 20.06.2012.

8. The crux of the issue to be decided in this case is as to whether the execution of the power of attorney deed and sale agreement by the petitioner were only for the purpose of loan or for sale of the property. Hence, no useful purpose would be served in the event of permitting the petitioner to examine the Special Tahsildar, Adi-Dravidar Welfare Department, Nanguneri as additional witness, especially when there is no dispute on letting out the suit property. More over, as rightly stated by the Court below, in the interlocutory application, the petitioner did not assign sufficient cause for the omission to mention the name of such witness in the list of witnesses. This Court does not find any valid reason to interfere with the finding of the Court below. Further, the decision relied on by the petitioner is not applicable to the facts and circumstances of this case.



9. In the result, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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.

To

The Subordinate Judge,
Valliyoor.

Copy to

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.
Madurai.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-22817[F] dated 16/07/2021)

CRP(MD)No.1684 of 2019

15.07.2021

SRK(CO)

LR (26.07.2021) 4P 5C