



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) Nos.1745 & 1746 of 2021
and C.M.P. (MD) No.9301 of 2021

1.Ponmadasamy
2.Sekar
3.Soundararajan

.. Petitioners in both CRPs

-VS-

1.Dharmar
2.Antoniammal
3.Praba
4.Jaquiline
5.Clitus
6.Pushpathai
7.Suresh Kumar
8.Loganatha
9.P.Thangaraj

.. Respondents in both CRPs

(Respondents 3, 4 and 6 to 8 were set ex-parte before court below)

Prayer :- Petitions under Article 227 of the Constitution of India against the fair and decreetal order in I.A.Nos.5 & 6 of 2021 in O.S.No.67 of 2012 dated 20.10.2021 on the file of Additional District Munsif, Tuticorin.

For Petitioners : Mr.G.Sridharan
(In both CRPs)

COMMON ORDER

The petitioners/plaintiffs have filed these Civil Revision Petitions challenging the orders dated 20.10.2021, passed by the learned Additional District Munsif, Tuticorin in I.A.Nos.5 and 6 of 2021 in O.S.No.67 of 2012. It is necessary to elaborate on the facts preceding for the filing of these petitions to appreciate the grievance of the petitioners/plaintiffs to the impugned orders.

Plaintiffs' case:-

2.The petitioners have filed the suit in O.S.No.67 of 2012 seeking a declaration of their title to the suit properties, for a consequential injunction restraining the defendants/respondents,



their men, agents or servants from interfering with their possession and enjoyment of the schedule properties, declaring that the registered Settlement Deed dated 03.02.2011, executed by the 2nd respondent in favour of the 3rd respondent, as null and void, to declare that the registered general Power of Attorney dated 02.03.2011, executed by the 3rd respondent in favour of the 4th respondent, as null and void and to declare that the registered Sale Agreement dated 19.10.2011, executed by the 4th respondent in favour of the 6th respondent, as null and void.

3.The petitioners would contend that they have purchased the following items of the suit schedule property from different parties under different Sale Deeds:-

Item of Property	Date of Sale	Vendor's Name
I Item	04.04.1984	S.I.Abdul Jafer
II Item	27.10.1984	Madasamy Nadar
III Item	28.10.1985	V.Arumugam
IV Item	25.11.1985	K.Kaniyalan
V Item	17.03.1986	S.S.Saraswathi
VI Item	28.07.1988	M.Mookaiah
VII Item	18.08.1988	Shanmugaiah & Thalaichamy
VIII Item	22.09.1988	Ruthammal
IX Item	17.10.1988	S.Karuppasamy
X Item	17.10.1988	Thatchayani
XI Item	21.09.1989	Muniyammal
XII Item	06.10.1989	L.Gopalakrishnan
XIII Item	06.10.1989	P.Selvaraj Power Agent - L.Gopalakrishnan
XIV Item	25.01.1991	S.Muniyandi
XV Item	25.01.1991	Uchimahali
XVI Item	30.01.1991	Dalton Thomas Joysingh

4.It is the case of the petitioners that after the purchase, they have mutated the Revenue records in their name in respect of the schedule properties. The entire properties are fenced within compound wall on all sides except in few place. Defendants 1 to 4 viz., respondents 1 to 4 herein belong to one family. The 1st respondent is the father and the 2nd respondent is the mother. The 3rd respondent is their daughter and the 4th respondent is their daughter-in-law through their predeceased son one Renukumar. The other respondents are close relatives and associates of respondents 1 to 4.



5.The case of the petitioners is that the deceased son of respondents 1 and 2, viz., Renukumar, had fraudulently manipulated the patta issued to one of the owners of S.No.206/1A1, Jeevadoss without his knowledge and created a bogus patta by tampering and illegally including the name of the 8th respondent as one of the pattadars. With the help of the bogus patta, a fraudulent/collusive suit in O.S.No.183 of 2010 was filed before the Principal District Munsif, Tuticorin in the name of the 8th respondent, viz., Loganathan against Renukumar. The said Renukumar, who was the defendant in the above suit, remained ex-parte and an ex-parte decree came to be passed in respect of Item Nos.XII and XIII of the suit scheduled properties. Thereafter, disputes broke out between the said Loganathan and Renukumar compelling the said Loganathan to file another suit in O.S.No.145 of 2011 before the Principal District Munsif, Tuticorin in which, he has contended that Renukumar and the 5th respondent herein had impersonated him and he had nothing to do with the suit in O.S.No.183 of 2010. He contended that he had not authorized any Advocate to appear on his behalf to file the case. He would further submit that he had been compelled to execute a Sale Deed belonging to the petitioners, which he refused. Thereafter, he also came to learn that respondents 1 and 2 created a power of attorney in favour of one Clitus, who in turn, has fraudulently executed a Sale Deed solely with the intention of grabbing the properties. In view of this interference in their possession and in the light of the fact that 3rd parties were claiming a right to the property, the petitioners have come forward with the instant suit.

6.The petitioners had impleaded respondents 7 and 8, since they were claiming a right to some portion of the property. The 9th respondent had set up a claim in respect of 9.85 cents of land out of a total extent of 73 cents in S.No.213/1, Mullakadu Village. The 9th respondent had also filed a suit in O.S.No.355 of 1999 seeking a prohibitory injunction as well as a mandatory injunction to remove the compound wall constructed in the property, which he claims to be Plot Nos.11 and 12 in S.No.213/1. The 9th respondent had managed to obtain an ex-parte decree by totally mis-representing before the Court that S.No.213/1 had been divided into house sites and he was the owner of Plot Nos.11 and 12 measuring 9.85 cents. The 9th respondent has also put the decree to execution in E.P.No.307 of 2000. In this execution proceedings, the petitioners have filed E.A.No.201 of 2001 to dismiss the same, as the decree was inexecutable. Since the 9th respondent had no shred of evidence to prove that the lands in S.No.213/1 were divided into plots and also that there was no property as detailed in the plaint schedule or in the ex-parte decree existing, the executing court had allowed the petitioners' application and dismissed the execution proceedings on the ground that the property could not be properly identified. This order was challenged by the 9th respondent in C.R.P.No.718 of 2002



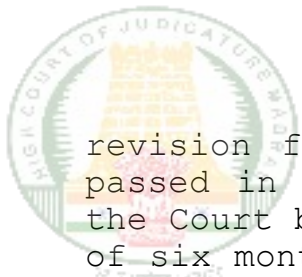
and this Court by order dated 21.01.2002 was pleased to remit the matter back to the executing court by providing an opportunity to the parties to identify and allot the property. This Court had directed the executing court to dispose of the case within a period of six months. However, for over seven years the 9th respondent did not take steps to proceed with the execution and thereafter, has filed E.A.No.71 of 2011 to appoint an Advocate Commissioner to locate the property and submit a report.

7.The petitioners filed a counter objecting to the contention made in E.A.No.71 of 2011 and submitted that the claim is barred by limitation and by appointing an Advocate Commissioner, non-existent properties were sought to be inspected and measured. Meanwhile, an extent of 2½ cents in S.No.213/1 belonging to the petitioners was claimed by one Mariappan and his wife Chellammal, who had filed the suit in O.S.No.115 of 2020 before the Additional District Munsif Court, Tuticorin for a declaration and injunction. By judgment dated 30.11.2006, the learned Additional District Munsif, Tuticorin was pleased to dismiss the suit against which, A.S.No.31 of 2007 was filed and is now pending before the Sub Court, Tuticorin.

Written statement filed by the defendants:-

8.Respondents 1 to 4 had entered appearance in the suit, subject matter of these proceedings and denied the allegations contained in the plaint. They would contend that the petitioners were trying to capitalize on the confusion that has been caused on account of the untimely death of Renukumar, son of respondents 1 and 2 herein.

9.The 9th respondent filed a written statement *inter alia* denying the various allegations made by the petitioners. The 9th respondent would contend that the petitioners had suppressed material facts and had fabricated documents to file the suit with an ulterior motive. The 9th respondent would submit that an extent of 73 cents of land in S.No.213/1 and another extent of 50 cents out of 2.35 acres in S.No.213/2, Mullakadu Village belonged to one Kuppusamy Pillai, who had got the property through Court auction held in E.P.No.138/1930 on the file of the District Munsif Court, Tuticorin. After taking auction of the property, Kuppusamy Pillai was in enjoyment and possession of the properties and he died interstate leaving behind his son Sreenivasagam Pillai as his legal heir. The said Sreenivasagam Pillai, on 18.07.1981, gave a general power in favour of one Sundaram to sell the properties comprised in S.Nos.213/1, 281/13 and 211/2, Mullakadu Village. By sale dated 30.10.1981, the said Power Agent had sold away Plot Nos.11 and 12 consisting of 10 cents in S.No.213/1 in favour of V.Kasi Nadar under a registered document of sale. It is the said Kasi Nadar, who had sold the property to the 9th respondent under a Sale Deed dated 02.04.1997. The 9th respondent would further submit that the



revision filed by him, in C.R.P.No.718 of 2002 against the order passed in E.A.No.202 of 2001, was allowed on 15.06.2004, directing the Court below to dispose of the execution petition within a period of six months from the date of receipt of a copy of the order. The 9th respondent had filed a commission application in E.A.No.71 of 2010 to identify and locate the suit property, which was strongly contested by the petitioners. After an elaborate enquiry, the petition was allowed by the Principal District Munsif, Tuticorin, who appointed one Mr.Ganapathy Subramanian, Advocate to inspect the property with the help of the Surveyor and to file a report. Against this order, the petitioners had filed C.R.P.No.1770 of 2011 on the file of this Court. The 9th respondent had sought to have the suit dismissed.

Interlocutory applications impugned in these revisions:-

10.After closing of the evidence on either side, the petitioners have come forward with the applications, which are the subject matter of these revisions. In the affidavit filed in support of the petition, the petitioners would submit that although the evidence is complete and the matter is posted for arguments of the petitioners, the instant application had been filed, since the petitioners discovered that certain important and vital questions regarding the title of the 9th respondent had been omitted to be asked during the cross examination of the 9th respondent, who was examined as D.W.2. They therefore, sought to have D.W.2 re-called for recording evidence. The 9th respondent alone has filed the counter statement in which, he has clearly stated that the evidence is already concluded in the above suit and the petition is nothing but an attempt to prolong the litigation. The suit is of the year 2012 and the petitioners have successfully dragged on the proceedings from the year 2012.

Order of the learned Additional District Munsif:-

11.The learned Additional District Munsif, Tuticorin by common order dated 20.10.2021 was pleased to dismiss the petition stating that there was no bona fides in the affidavit. The learned Judge after perusing the main suit notespaper, held that the petitioners had concluded the cross examination of D.W.2 on 05.03.2019. Thereafter, the case was posted for arguments and in the meanwhile, the petitioners sought to re-open and re-call and receive documents. The learned Judge has also held that the petitioners were trying to fill up the lacunae. The learned Judge, relied upon the judgment in **Ram Rati vs. Mange Ram and Others** reported in **AIR 2016 SC 1343**, wherein the Apex Court had interpreted the provision of Order 18 Rule 17 Civil Procedure Code to hold that the above provision only enables a Court to clarify any doubts that they have with regard to the evidence let in by the parties. The provisions, however, cannot be utilized to fill up omissions in the evidence of a witness who has already been examined. Challenging the above order, the



petitioners are before this Court.

Submissions:-

12.Mr.G.Sridharan, learned counsel appearing for the petitioners would submit that after the examination of the parties, the petitioners had marked Ex.A91, which is a Sale Deed of the year 1922. He would submit that the petitioners are tracing their title to the property on the basis of this document whereas, the respondents were making a claim on the basis of a Sale Deed of the year 1949.

13.The learned counsel for the petitioners relied on the following judgments in support of his contentions:-

- (i) **K.K.Velusamy vs. N.Palanisamy [2011 (3) CTC 422];**
- (ii) **Vadiraj Naggapa Vernekar (D) Through LRs vs. Sharad Chand Prabhakar Gogate [(2009) 4 SCC 410];** and
- (iii) **Ram Rati vs. Mange Ram (D) Through LRs and others [2016 (5) CTC 555].**

Discussion:-

14.Heard the learned counsel for the petitioners and perused the records.

15.The lands in S.No.213/1 has been morefully described as schedule items 3, 4, 7, 8, 9, 11, 14, and 15 in the suit schedule. The petitioners traced title under Ex.A91 whereas, the 9th respondent claims a title to the property though a Sale Deed, which is later in point of time.

16.The dispute between both parties appears to be with reference to their respective tracing of titles. Both the 9th respondent as well as the petitioners have filed documents to substantiate their claim over the suit scheduled property. The Document viz., Ex.A.91 is a registered document and there was no necessity to ask further questions on a registered document, as the document speaks for itself and the provisions of Sections 91 and 92 of the Evidence Act clearly provide that there cannot be any evidence contrary to the terms of a written agreement except in exceptional circumstances as provided in the proviso. The petitioners have not made out any case for re-calling D.W.2 and re-opening the evidence. The learned District Munsif, Tuticorin has rightly come to the conclusion that the only attempt on the part of the petitioners/plaintiffs was to protract the proceedings and to fill up the lacunae. This cannot be permitted in the guise of a recall and re-open petition. Thus, I do not find any infirmity in the order dated 20.10.2021 passed by the learned Additional District Munsif, Tuticorin in I.A.Nos.5 and 6 of 2021 in O.S.No.67 of 2012. and accordingly, the Civil Revision Petitions are dismissed. No



costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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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 Additional District Munsif, Tuticorin.

+1 CC to M/s.G.SRIDHARAN, Advocate (SR-33965[F] dated 10/11/2021)

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10.11.2021

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