



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (PD) (MD) No.1866 of 2021

and

C.M.P (MD) No.10021 of 2021

Rajeswaran

... Petitioner

Vs.

1.Saifulla

2.M.M.Jamal Mohaideen

... Respondents

PRAYER:- Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to call for the records pertaining to the Fair Order and Decreetal order in E.A.No.7 of 2021 in E.P.No.37 of 2018 in O.S.No.71 of 2007 on the file of the Sub Court, Thiruchendur dated 12.11.2021 and to set aside the same.

For Petitioner

: Mr.P.Gowrishankar

ORDER

The third party, whose application under the provision of Order 21 Rule 97 r/w section 47 C.P.C in E.A.No.7 of 2021 in E.P.No.37 of 2018 was dismissed by the learned Subordinate Judge, Thiruchendur, is the party aggrieved before this Court.

2. The facts in brief are as follows:-

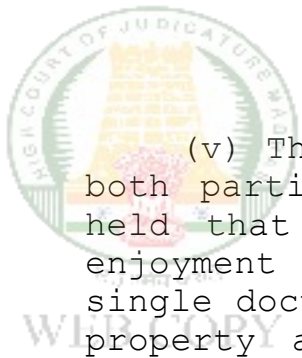
(i) The first respondent herein who is the plaintiff in the suit in O.S.No.71 of 2007 had filed the above suit to declare that he is the absolute owner of the suit schedule property and directing the defendant /second respondent herein to deliver the possession of the suit property to him. The said suit after contest was decreed in favour of the plaintiff. Thereafter, the second respondent had filed an appeal in A.S.No.12 of 2015 on the file of the 1st Additional District Court, Thoothukudi. The said appeal after contest was dismissed on 23.03.2018, against which the second appeal in S.A(MD)No.52 of 2019 was filed and the same was dismissed on 16.03.2021 and thereby, the judgment and decree in O.S.No.71 of 2007 attained finality.



(ii) Thereafter, the first respondent had filed E.P.No.37 of 2018 against the second respondent for delivery of possession. Since the execution petition was not being proceeded with, the first respondent had filed C.R.P(MD) No.810 of 2021 on the file of this Court for a direction to dispose of E.P.No.37 of 2018 expeditiously. The revision was allowed and the Executing Court was directed to dispose of E.P.No.37 of 2018 on or before 01.09.2021. At this juncture, the second respondent had filed in E.A.No.2 of 2021 for stay and the same was dismissed by order dated 25.08.2021 and on 31.08.2021, the Executing Court had directed delivery and the decree holder / first respondent was directed to submit the delivery batta. Since the proceedings could not be concluded on 01.09.2021 as directed by this Court, extension was sought for and time was granted till 27.11.2021. The delivery warrant in the meanwhile was returned for want of police protection and the first respondent had filed E.A.No.6 of 2021 for providing police protection to effect delivery of the property and when the said application was pending, the impugned E.A.No.07 of 2021 came to the file by the third party/ revision petitioner herein.

(iii) The revision petitioner had set up a lease cum sale agreement dated 15.05.1993 said to have been executed by one Sehu Sulaiman in his favour renting the property on an annual rental of Rs.6,000/- with an advance of Rs.10,000/- for a period of 28 years commencing from 15.05.1993 and ending on 14.05.2020. The case of the petitioner is that under the agreement, i.e., lease cum sale agreement, it was agreed that at the end of 28 years the said Sehu Sulaiman would execute a sale deed in favour of the petitioner herein and he has been in continuous possession and enjoyment of the property and he had come to know about the suit in O.S.No.71 of 2007 only when the bailiff had visited the suit property. The decree in O.S.No.71 of 2007, according to the revision petitioner, was obtained by collusion and fraud. Therefore, he had filed an obstruction petition.

(iv) The first respondent had filed a detailed counter stating that not a single document had been filed to show that the petitioner was in possession and enjoyment of suit schedule property. That apart, the deed of lease cum agreement dated 15.05.1993 appears to be a fraudulent document. The second respondent had been contesting the said petition all along claiming to be in possession of the property and the present application was nothing, but a last ditch attempt on the part of the second respondent to ensure that the first respondent herein does not take possession of the suit property.



(v) The learned Subordinate Judge, Thiruchendur, after hearing both parties dismissed the said application. The learned Judge held that the petitioner, who claims to be in possession and enjoyment of the property for over 20 years, had not produced a single document to show that he has been in possession of the suit property at any point of time. That apart, the document in question was unregistered and not adequately stamped, which cannot be accepted in evidence. The revision petitioner had not stepped into the witness box to adduce evidence. Therefore, the learned Judge had dismissed the petition. Challenging the same the revision petitioner is before this Court.

3. Heard the learned counsel for the petitioner and perused the records.

4. As rightly pointed out by the learned Subordinate Judge, Thiruchendur, the petitioner has not produced any documents to show his possession and enjoyment of the suit property for over 28 years. The documents filed by him namely Ex.P1 and Ex.P2 do not in any way prove his case. The lease cum sale agreement dated 15.05.1993 has rightly been rejected to be received as evidence by the learned Judge, since the same is not registered and not adequately stamped. If really the petitioner was in possession of the property, he would have definitely come to know about the proceedings much earlier. Further, if the lease cum sale agreement was a true document, the said Sehu Sulaiman would not have sold the suit property to the plaintiff under the registered document on 26.03.2007 and once the sale is effected in favour of the first respondent, the petitioner cannot claim any right over the same.

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

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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,
Thiruchendur.

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