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C.R.P(PD).No.930 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P(PD).No.930 of 2022
and C.M.P.No.4740 of 2022

1. Kanagaraj
2. Leena Sujathamary ... Petitioners

Vs

T.Kothandapani ... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the order and decretal order passed in I.A.No.113 of 2021 in O.S.No.43 of 2021 on the file of the District Munsif Cum Judicial Magistrate, Thirukalukundram dated 02.03.2022.

For Petitioners : Mr.C.Jagadish

For Respondent : Mr.G.Narayanan

ORDER

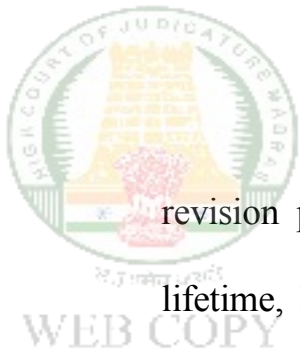
This Civil Revision Petition has been preferred challenging the order of the learned District Munsif Cum Judicial Magistrate, Thirukalukundram, dated 02.03.2022 made in I.A.No.113 of 2021 in O.S.No.43 of 2021.



2. The revision petitioners are the defendants in the suit. The respondent/plaintiff has filed a suit to declare the Sale Deed dated 19.03.2004 as null and void and permanent injunction restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the plaintiff over the suit property. The revision petitioners/defendants filed a petition in I.A.No.113 of 2021 to reject the plaint and the same was dismissed. Aggrieved over that, the petitioners filed this Civil Revision Petition to set aside the impugned order.

3. Learned counsel for the petitioners submitted that despite the sale deed was of the date 19.03.2004, the plaintiff had the knowledge about the sale deed only in the year 2014; the sale deed seems to have got executed on the same day when the discharge receipt of the mortgage also executed; the father of the plaintiff was made to believe that the sale deed also a document related to the discharge of the mortgage and thus was mislead him to execute the sale deed and hence, the suit filed by the plaintiff is maintainable. In support of his above contention, he also relied upon the judgment of the Hon'ble Supreme Court in the case of “***Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajra) Dead reported (2020) 7 SCC 366***”.

4. Learned counsel for the respondent submitted that the father of the



revision petitioners was the lawful owner of the property and even during his lifetime, he had executed the sale deed in favour of the respondent/plaintiff on 19.03.2004; prior to the execution of the sale deed, the father of the plaintiff had obtained a loan of Rs.60,000/- (Rupees Sixty Thousand only) from the 1st defendant and executed a Mortgage Deed dated 22.03.2003 and deposited the title deeds of the suit property with the 1st defendant; subsequently, he sold the suit property itself to the 1st defendant and by virtue of the sale deed, the earlier mortgage also got discharged; having waited till the death of the father, the plaintiff, who is the son of the vendor of the 1st defendant, has filed the frivolous suit to declare the sale deed dated 19.03.2004 as null and void;

5. The facts which are not in dispute are that the suit property was originally owned by one Thamburatti, who is the father of the plaintiff. The sale deed was executed on 19.03.2004 during the lifetime of Thamburatti. Thamburatti was alive till 30.11.2007 and during the lifetime of Thamburatti, the plaintiff did not challenge the sale deed. Neither the defendants have filed any suit for recovery of possession, by claiming that the father of the plaintiff continued to have kept the possession of the suit property with himself, even after executing the sale deed



dated 19.03.2004 in favour of the 1st defendant.

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6. During the lifetime of Thamburatti, he obtained a loan of Rs.60,000/- from the 1st defendant by executing a mortgage deed dated 22.03.2003. The said mortgage got discharged on the day when the sale deed was also executed i.e., on 19.03.2004. It is in practice that whenever a sale is made in respect of a property, the subsisting mortgage on the property will be discharged through appropriating a part of the sale consideration towards discharging the mortgage loan.

7. If the 1st defendant had filed any suit for recovery of possession during the lifetime of Thamburatti as stated already, it is understandable that Thamburatti had some stand adverse to the sale deed. The learned counsel for the petitioners made it clear that on the day of executing the sale deed itself, the possession of the suit property was handed over to the first defendant and that would show the genuineness and completion of the sale transaction.

8. However, there was a police complaint given by the daughters of Thamburatti against the defendants 1 and 2 by claiming that they are the owners of the property and they are entitled for a share in the suit property; no action has



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been taken on the complaint; neither the complainants seemed to have pursued the complaint. So, this would also confirm that the family members of Thamburatti had the knowledge about the sale deed even in the year 2013. When the daughters, who are the female members of the family, had the knowledge, naturally the male member of the family viz., the plaintiff herein could have also got the knowledge about the sale deed. Therefore, the plaint seems to be only a weak attempt to disturb the completed sale transaction through a clever drafting.

9. In the result, this this Civil Revision Petition stands allowed and the order of the learned District Munsif Cum Judicial Magistrate, Thirukalukundram, dated 02.03.2022 made in I.A.No.113 of 2021 in O.S.No.43 of 2021 is hereby set aside. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Internet : Yes

Speaking Order

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To

1. The District Munsif Cum Judicial Magistrate,
Thirukalukundram.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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and C.M.P.No.4740 of 2022

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