



C.R.P.No.2277 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.2277 of 2021

1.B.Rajalakshmi

2.B.Thankavel

3.B.Egambaram

... Petitioners

Vs.

1.Kannan

2.Santha Kumar

3.Arasa Kumar

4.Senthilkumar

5.Sivakumar

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to set aside the fair and decreetal orders dated 04.12.2020 made in C.M.A.No.4 of 2016 on the file of I Additional Sub Court, Villupuram, which in turn arose against the fair and decreetal orders dated 19.06.2014 made in I.A.No.1683 of 2011 in O.S.No.552 of 2006 on the file of the Principal District Munsif at Villupuram, Villupuram District.



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For Petitioners : Mr.D.S.Ramesh
for Mr.V.Rajendran

ORDER

This petition has been filed to set aside the fair and decreetal orders dated 04.12.2020 made in C.M.A.No.4 of 2016 on the file of I Additional Sub Court, Villupuram, which in turn arose against the fair and decreetal orders dated 19.06.2014 made in I.A.No.1683 of 2011 in O.S.No.552 of 2006 on the file of the Principal District Munsif at Villupuram, Villupuram District.

2.For the sake of convenience, the parties are referred to as per their ranking in the trial Court and in appropriate places, their rank in the present petition would also be indicated.

3.The revision petitioners are the plaintiffs in O.S.No.552 of 2006 on the file of the Principal District Munsif, Villupuram. They filed the suit for declaration of title and for a consequential relief of permanent



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injunction against the defendants. The suit property is an agricultural lands measuring 51 cents in S.No.87/8A of Kusba Karanai Village, Ashokapuri Post, Villupuram. The plaintiffs had become the owner of the suit property through three different sale deeds dated 29.04.1954 (Ex.A1), 25.05.1955 (Ex.A21) and 16.12.1958 (Ex.A22) for 16 cents, 21 cents and 9 cents respectively. S.No.87/8 had a total extent of 59 cents before its sub-division and the remaining 8 cents was owned by the first defendant vide sale deed dated 07.02.1994 (Ex.A18). There was a re-survey of the land in which the total extent of 59 cents in S.No.87/8 was sub-divided into 51 cents in S.No.87/8A and 8 cents in S.No.87/8B. However, while issuing patta which was hitherto was a joint patta bearing patta no.91 (Ex.A3) the 51 cents of land in S.No.87/8A was erroneously included in patta no.54 issued to the defendants and the land measuring 8 cents was included in patta no.138 given to the plaintiffs. Since patta no.138 contained many land parcels bearing different survey numbers this mistake went unnoticed and by the time it came to the knowledge of the plaintiffs, the first defendant had applied to the revenue authorities for including their lands, to the extent of 8 cents (wrongly



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mentioned in patta no.138) and the revenue authorities without any notice to the plaintiffs ordered for the inclusion of 8 cents of land in patta no.54 deleting the same from patta no.138. This led to a situation where the entire extent of 59 cents was shown in the revenue records as owned by the first defendant. The plaintiffs after coming to know about the mistake applied to the Tahsildar Villupuram who after conducting an enquiry corrected the mistake by issuing a fresh patta 420 for the 51 cents in S.No.87/8A in favour of the plaintiffs.

4.The defendants despite the correction of the bonafide mistake in the patta continued to interfere with the peaceful possession of the suit property by the plaintiffs for which the plaintiffs had to file O.S.No.552 of 2006 on the file of Principal District Munsif, Villupuram, praying for declaration of the title and permanent injunction. The plaintiffs had also filed I.A.No.1537 of 2006 along with O.S.No.552 of 2006 for ad-interim injunction which was declined due to which an appeal in CMA.No.3 of 2007 was filed before the Sub-Court, Villupuram. CMA.No.3 of 2007 was allowed on 17.07.2007 which was challenged by the defendants in



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CRP.No.3805/2009 and it was disposed of on 03.03.2010 with a direction to the trial Court to dispose of the main suit within three months. However, since the defendants allegedly trespassed into the suit property despite the order in CMA.No.3 of 2007 the plaintiffs filed a contempt petition in I.A.No.1683 of 2011 against the defendants. It was taken up along with the main suit in which a decree was passed in favour of the plaintiffs. However, the contempt petition was dismissed. This dismissal of contempt petition was challenged by the plaintiffs in CMA.No.4 of 2016 on the file of the I Additional Sub-Court, Villupuram. The learned I Additional Subordinate Judge, Villupuram, dismissed CMA.No.4 of 2016 and the order of the learned District Munsif, Villupuram, was upheld. Challenging the said orders, the present Civil Revision Petition is filed.

5.Heard Mr.D.S.Ramesh for Mr.V.Rajendran learned counsel appearing for the revision petitioners.



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6.It is pertinent to note that the plaintiffs had a decree in their favour for the suit property comprising 51 cents. It is also true that they had to seek legal remedy for their own property due to a mistake committed by the revenue authorities while sub-dividing the survey numbers 87/81 in to S.Nos.87/8A & 87/813. The trial Court had not only declared the title of the plaintiffs but also granted permanent injunction in respect of the suit property. The decree and judgment was passed on 19.06.2014 in O.S.No.552 of 2006 and as such the plaintiffs ought to have filed an execution petition, if the defendants are obstructing their possession.

7.In any event in I.A.No.1683/2011, the plaintiffs had contended that the defendants trespassed into the suit property on 21.06.2010 and laid a pipeline. It is further contended that the defendants cut the sugarcane crops on 30.07.2010 & 03.09.2011 and that on all the three occasions the plaintiffs filed a criminal complaint with the police against the defendants. However, the plaintiffs did not take steps to amend the plaint in O.S.No.552 of 2006 seeking for recovery of



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possession of the suit properties even though according to the plaintiffs the defendants trespassed into their property even during the pendency of the suit. The judgment and decree was passed only in the year 2014.

8.Be that as it may, the learned District Munsif, Villupuram, dismissed I.A.No.1683 of 2011 mainly on the ground that the plaintiffs did not adduce any satisfactory evidence that the defendants had trespassed into the suit property thereby interfered with the peaceful possession of the plaintiffs.

9.In CMA.No.4 of 2016 the order of the trial Court in I.A.No.1683 of 2011 was upheld as no evidence was let in by the plaintiffs to substantiate their claim. The observations made by both the Courts below do not warrant any interference and the remedy of the plaintiffs lies elsewhere.

10.Accordingly, the Civil Revision Petition is dismissed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
mtl

To

- 1.The I Additional Sub Court, Villupuram.
- 2.The Principal District Munsif, Villupuram.
- 3.The Section Officer, VR Section, High Court, Madras.

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