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CRP.No.496 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.496 of 2018
and
C.M.P. No.2586 of 2018

Prasanth Udumula

.. Petitioner

Versus

U.A. Anthony Reddy

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 28.11.2017 made in C.M.A. No.08/2017 on the file of the Sub-ordinate Judge, at Madurantakam confirming the order and decreetal order ated 18.07.2017 in I.A. No.1521 of 2016 in O.S. No.155/2016 on the file of the District Munsif Court, Madurantakam.

For Petitioner : Mr. R. Udhyakumar

For Respondent : Mr. N.E.A. Dinesh
(For M/s. V.Nichales)

**ORDER**

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This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 28.11.2017 made in C.M.A. No.08/2017 on the file of the Sub-ordinate Judge, at Madurantakam confirming the order and decreetal order dated 18.07.2017 in I.A. No.1521 of 2016 in O.S. No.155/2016 on the file of the District Munsif Court, Madurantakam.

2. The petitioner herein is the plaintiff and the defendant herein is the respondent in the Original Suit.

3. The case of the petitioner is that the petitioner filed the suit in O.S. No.155 of 2016 on the file of the District Munsif Court, Madurantakam, seeking for permanent injunction against the defendant. Pending the Original suit, the petitioner has filed I.A. No.1521 of 2016 before the Trial Court under Order XXXIX Rule 1 and 2 of CPC seeking to grant Temporary Injunction against the defendant/respondent herein. The District Munsif, by order dated 18.07.2017 dismissed the aforesaid application, after observing that while the original document is in the custody of someone else as security for availing loan, based on the missing



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certificate, the petitioner's father executed settlement deed in favour of the petitioner before the Sub-Registrar and the plaintiff/petitioner herein had not approached the Trial Court with clean hands and dismissed the aforesaid application. Being aggrieved by the aforesaid findings, the plaintiff/petitioner has preferred an appeal in C.M.A.No.08 of 2017 before the Sub-Ordinate Judge, Madurantakam. The Sub-Ordinate Judge, after hearing both sides dismissed the aforesaid appeal confirming the order dated 18.07.2017 passed by the Trial Court. Being not satisfied with the aforesaid order, the plaintiff has filed the present Civil Revision Petition.

4.The learned counsel for the petitioner would submit that even the petitioner's father had given his land as additional security for the loan availed, he is absolute owner of the suit property. Out of his right over the suit property, the settlement deed was executed in favour of the plaintiff/petitioner herein. By virtue of Settlement Deed dated 13.04.2016 executed in favour of the plaintiff/petitioner herein, the petitioner is in possession and enjoyment of the suit property. Without discussing the aforesaid fact, both Courts were going into the details of release of the document from Bank by father of the petitioner and in whose custody the



documents are. The issue whether the documents of the property are in the hand of the petitioner, respondent or any other person is irrelevant to decide the temporary injunction while the petitioner is absolute owner of the suit property after execution of Settlement Deed. As the balance of convenience is clearly on the side of the petitioner, the orders dated 28.11.2017 passed by the Sub-ordinate Court is liable to be set aside.

5.The learned counsel for the respondent would submit that both Courts have rightly dismissed the application in I.A. No.1521 of 2016 and C.M.A. No.08 of 2017 after having considered the facts and circumstances of the case and perused the oral and documentary evidence placed by both parties. Suppressing the facts that while the original document is in the custody of the Bank for collateral Security for availing loan, on the pretext of missing of original document, the father of the petitioner executed the Settlement Deed in favour of the petitioner and based on that Settlement Deed, the petitioner has sought the temporary injunction. Further, the petitioner has not proved that the settlement deed was executed in his favour free of encumbrance and it has to be decided after only full fledged Trial before the Court below. Hence, the Courts below has rightly



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dismissed the I.A. No.1521 of 2016 and C.M.A. No.08 of 2017 after considering the foul play of the petitioner's father.

6.Heard, the learned counsel for the petitioner and the learned counsel for the respondent as well as perused the material available on record.

7.Having considered the facts and circumstances of the case and submissions of the learned counsel for both parties, it makes clear that the plaintiff is claiming the suit property based on the Settlement Deed dated 23.09.2016 executed by his father. However, the said settlement Deed has been registered under the pretext of missing original document, while the original document is in the custody of one Mr.Paul Raj for availing loan from Indian Bank where the document has been handed over for security purpose. When the release of the original document is under question for having obtained loan from Bank, the settlement deed has been executed in favour of the plaintiff after suppressing some material facts. Hence, the title to the suit mentioned property is in dispute. While being so, the plaintiff/petitioner herein has to prove his title over the suit property by



producing oral and documentary evidence before the Trial Court. After full fledged trial, The Trial Court shall decide the claim of the plaintiff/petitioner herein. Hence, this Court is not inclined to interfere with the orders dated 18.07.2017 and 28.11.2017 passed by the Courts below as there is no merit in this Revision petition.

8. In the result, the Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed if any.

26.10.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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Copy To:

1. The ub-ordinate Judge, at Madurantakam.
2. The Section Officer, V.R.Section
High Court, Madras.

T.V.THAMILSELVI, J.



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