



CRP.No.2049 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.08.2022

Delivered On : 14.10.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.2049 of 2020

and

CMP.No.12869 of 2020

P.Devan

.. Petitioner/Petitioner/Plaintiff

Vs.

Mr.P.Sundaravardan

.. Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 17.12.2019 in I.A.No.1005 of 2016 in O.S.No.543 of 2016 on the file of the learned Principal District Munsif, Alandur.

For Petitioner : Mr.M.Thangadurai

For Respondent : Mr.P.Sundaravardan
(Party-in-person)



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ORDER

This Petition has been filed to set aside the fair and decreetal order dated 17.12.2019 in I.A.No.1005 of 2016 in O.S.No.543 of 2016 on the file of the learned Principal District Munsif, Alandur.

2. The Learned Counsel for the Petitioner submitted that the Petitioner is the younger brother of the Respondent. As per the submission of the Learned Counsel for the Petitioner, the Petitioner had instituted the suit in O.S.No.543 of 2016 before the Learned District Munsif, Alandur, for bare injunction.

2.1. It is the submission of the learned Counsel for the Petitioner that the property was purchased on the contribution by the Plaintiff. He had contributed a sum of Rs.1,00,000/- towards sale agreement and then, a sum of Rs.1,85,000/- as subsequent payment to the vendor of the property. The Defendant, who is none other than the elder brother of the Plaintiff had also contributed to the purchase of the property. At that time of



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purchasing the suit property, the father of the Plaintiff and the Defendant was alive. He insisted that the property may be purchased in the name of the elder persons in the family. Since the brother is the elder son, the property was purchased in his name.

2.2. It is the further submission of the Learned Counsel for the Petitioner that the Petitioner, as Plaintiff, was residing in the portion of the suit property. The Defendant, elder brother had vacated the premises and was staying in the rental premises. While so, after the death of the father of the Plaintiff and the Defendant, the dispute started. Therefore, the Defendant attempted to dispossess the family of the Plaintiff from the property, against which, a Police complaint was given. Considering the relationship between the parties who are brothers, only CSR was registered by the Police and the Police advised both the parties to agitate their rights in the Civil Court and get appropriate orders. Therefore, the Plaintiff had filed the suit. In the same suit, the Plaintiff had filed I.A.No.1005 of 2016 under Order 2 Rule 2 of CPC, seeking leave of the Court to file a suit for partition. After hearing the enquiry, the Learned



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District Munsif, Alandur, had dismissed the petition under Order 2 Rule 2 CPC. Aggrieved by the same, the Plaintiff as the Petitioner had approached this Court under Article 227 of Constitution of India, seeking to set aside the order passed by the Learned District Munsif, Alandur, in I.A.No.1005 of 2016 in O.S.543 of 2016.

3. The Respondent has appeared as Party-in-Person before this Court. As per his submission, the Respondent herein as elder brother of the family had earned for the family and out of his earnings, he had purchased the property. He had vacated the property to demolish the property and put up construction. Accordingly, he had obtained permission from the Corporation to enable him to put up construction after vacating the property and demolishing the same. The Plaintiff herein is not residing in the schedule property. The suit had been instituted by the Plaintiff with an ulterior motive by fraudulent means. It is the submission of the Respondent/Party-in-Person that he was employed in the LIC. Therefore, he was earning and was taking care of family and he had purchased the property out of his own earnings by obtaining loan from



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LIC. So, the Plaintiff had instituted a false suit only with an ulterior motive to cause harassment. It is the submission of the Respondent that, after instituting the suit, he had been continuously harassed all these years by the Plaintiff. Now, the Respondent had retired from his service.



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3.1. Further, the submission of the Respondent-Party-in-Person is that he had furnished all relevant documents before Learned District Munsif, Alandur. The Plaintiff had filed a petition seeking the Learned District Munsif, Alandur, not to return the documents furnished by the Respondent. After filing the suit, the interim stay was granted. Therefore, the suit could not be proceeded. It is the submission of the Respondent/Party-in-Person that the Civil Revision Petition itself is not maintainable, since the suit itself is filed by fraudulent means against the original owner. Therefore, he seeks dismissal of the Civil Revision Petition with costs. Due to the conduct of the Petitioner, the Respondent who is the owner of the property had unnecessarily paid rent for all the years.

4. On consideration of the rival submissions and on perusal of the Order passed by the learned Principal District Munsif, Alandur, the Petition filed by the Plaintiff seeking permission of the Court to file a Suit for partition at a later stage under Order II Rule II r/w 151 of CPC was resisted by the Defendant/Respondent. After due enquiry, the learned Principal District Munsif, Alandur dismissed the Petition in I.A.No.1005 of



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2016 in O.S.No.543 of 2016 dated 17.12.2013 on ground that the Plaintiff had not filed a Suit for partition. Even though he filed a Suit for permanent injunction, it should have contained information and documents regarding the property. In the absence of the same, the learned Principal District Munsif, Alandur rejected the prayer of the Petitioner/Plaintiff on the ground that the Suit was not filed for partition or does not have *locus-standi*. Therefore, the Petition was dismissed.

4.1. The contention of the learned Counsel for the Revision Petitioner/Plaintiff before the trial Court is also cannot be accepted. If the contention of the learned Counsel for the Petitioner herein, who was the Plaintiff before the learned Principal District Munsif, Alandur, is to be accepted as reasonable, he ought to have filed a Suit for partition and also would have sought the relief of interim injunction instead he had filed a Suit for bare injunction and seeks to resolve the right to file a Suit for partition at a later stage.

4.2. The pleadings in the plaint states that the Suit Property was



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purchased by the joint contribution of the Plaintiff and the Defendant.

Since the father of the Plaintiff and Defendant was alive on the date of the purchase of the property, he insisted that the property be purchased in the name of the elder member of the family. Therefore, the property was purchased in the name of the Defendant who is the elder brother. The Petitioner was residing in the property, the Defendant was residing outside the property. The Defendant attempted to dispossess the Plaintiff from the Petition/Plaint mentioned in the property. Therefore, he had sought for permanent injunction against the Defendant.

4.3. In the Plaint averments regarding the claim that the Plaintiff is owner of the property, Defendant is also owner of the property. Under such circumstances, Plaintiff could have filed a Suit for partition. He had not done so. After filing the Suit for bare injunction, he had filed this Petition seeking to permit him to file the Suit for partition at a later stage which was refused by the trial Court. The reasons mentioned by the trial Court in the Order in I.A.No.1005 of 2016 in O.S.No.543 of 2016 is found acceptable and reasonable. The order does not warrant any



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interference of this Court under Article 227 of Constitution of India.

Therefore, the Plaintiff had not filed a Suit for partition and the attempt of the Plaintiff seeking permission of the Court to file a Suit for partition at a later stage is found to be misconceived and also with an ulterior motive to delay the proceedings. Therefore, based on the objections of the learned Counsel for the Respondent in this Petition, who was the Respondent before the trial Court, this Court does not find any reason to interfere with the finding of the learned Principal District Judge, Alandur.

In the result, this Civil Revision Petition is dismissed as having no merits.

The learned Principal District Munsif, Alandur is directed to dispose of the Suit within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Internet: Yes/No



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Speaking Order/Non-speaking Order

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To
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1. The learned Principal District Munsif,
Alandur.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

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Pre-delivery Order made in
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