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CRP.No.1119 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Civil Revision Petition No.1119 of 2021

&

CMP.No.8702 of 2021

Lingammal

.. Petitioner

Versus

C.K. Sampathkumar

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26.08.2020 made in C.M.A.No.1 of 2016 by the learned Subordinate Judge, Uthangarai, confirming the fair and decreetal order dated 26.10.2015 made in I.A.No.210 of 2014 in O.S.No.55 of 2014 by the learned District Munsif and Judicial Magistrate of Pochampalli.

For Petitioner : Mr.V.Nicholas

For Respondent : Mr. P.S. Kothandaraman

ORDER

This Civil Revision Petition is filed challenging the fair and decreetal orders dated 26.08.2020 made in C.M.A.No.1 of 2016 by the learned Subordinate Judge, Uthangarai, upholding the orders dated 26.10.2015



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passed in I.A.No.210 of 2014 in O.S.No.55 of 2014, in and by which, the learned trial judge dismissed the petition filed by the petitioner/plaintiff under order 39, Rule 1 and 2 and section 151 of CPC, seeking temporary injunction restraining the respondents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

2. The revision petitioner herein is the plaintiff in O.S.No.55 of 2014 on the file of District Munsif, Pochampalli. She filed the said suit for the following reliefs;

- (a) declaration of her title to the suit property;
- (b) for permanent injunction restraining the defendants and their men and agents from trespassing into the suit property and not to disturb their peaceful possession and enjoyment of the plaintiff;
- (c) to declare the sale deed dated 29.06.1995 executed in favour of 6th defendant as null and void;
- (d) to declare the sale deed dated 11.10.2013 executed in favour of 7th defendant as null and void
- (e) for granting permanent injunction restraining the 7th defendant from alienating or encumbering the suit property.

3. The 7th defendant alone contested the suit and filed his written statement. The defendants 1 to 5 are wife and children of one Chinnaraj (deceased) respectively. Chinnaraj is the brother of the plaintiff/petitioner.



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The said Chinnaraj executed a sale deed along with the defendants 1 to 5 in favour of the 6th defendant on 29.6.1995, who, in turn, executed a sale agreement in favour of the 7th defendant. The 7th defendant filed a suit in O.S.No.189 of 2010 for specific performance before the Court of Principal Subordinate Judge, Krishnagiri. The said suit was decreed and as per the decree, a sale deed was executed in favour of the 7th defendant on 11.10.2013. The plaintiff's main contention in O.S.No.55 of 2014 is that the suit property was allotted to her share by way of an oral partition in the family and that her brother Chinnaraj, without her knowledge had executed a sale deed in favour of the 6th defendant and therefore, the same is null and void. Along with the suit, the plaintiff filed an application in I.A.No.210 of 2014 seeking for a temporary injunction against the defendants under Order XXXIX, Rule 1 and 2 and Section 151 CPC, wherein, the 7th defendant who is the only contesting defendant filed his counter and the others remained absent and were set exparte.

4. The learned trial Judge, after analysing the evidence on record, held that the plaintiff has not adduced any oral/documentary evidence to show that she is in possession of the suit property and dismissed the I.A.No.210 of 2014 vide his orders dated 26.10.2015. Aggrieved over the same, the present Civil



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Revision Petition is filed.

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5. Heard Mr. V. Nicholas, learned counsel appearing for the revision petitioner and Mr.P.S.Kothandaraman, learned counsel appearing for the sole respondent.

6. It is the contention of Mr.V.Nicholas, learned counsel appearing for the revision petitioner that the suit property and other properties originally belonged to the father of the plaintiff and her brothers and that in an oral partition, the suit property was allotted to her share. It is further contended by him that the plaintiff's brother Chinnaraj, without her knowledge, had sold the suit property which is an agricultural land in favour of the 6th defendant on 29.6.1995 through a registered sale deed.

7. It is seen from the records that the plaintiff, in order to prove her possession over the suit property had produced only the sale deed executed in favour of her father during 1960 and the sale deed executed by her brother late Chinnaraj in favour of the 6th defendant on 29.06.1995. The sale deed executed in favour of the 7th defendant by the Principal Subordinate Judge, Krishnagiri in execution of decree in O.S.No.189 of 2010 was marked as



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Ex.P.3. Except these three documents, no other document was filed on the side of the plaintiff to show that she has been in possession and enjoyment of the suit property to the exclusion of others right from the date of the alleged oral partition. The trial court, after considering this aspect, came to a definite conclusion that the plaintiff has not proved her possession over the suit property. All the observations made by the trial court judge are perfectly in order and hence this Court does not see any reason to interfere with the findings recorded by the learned trial court judge. Therefore, the Civil Revision Petition is dismissed.

7. Since the suit is of the year 2014, the trial court judge is directed to dispose of the main suit as early as possible but not later than six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

12.09.2022

Index : Yes/No

Internet : Yes/No

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To

1. The learned Subordinate Judge, Uthangarai.
2. The learned District Munsif and Judicial Magistrate, Pochampalli.



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R. HEMALATHA, J.

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