



C.R.P.No.2235 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM

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

C.R.P.No.2235 of 2021

R.Thiyagu

... Petitioner

Vs.

S.Venkatachalam

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decretal orders dated 19.03.2020 passed in C.M.A.No.7 of 2018 on the file of the Sub Court, Vaniyambadi, reversing the fair and decretal orders dated 06.12.2017 in I.A.No.290 of 2017 in O.S.No.58 of 2017 on the file of the District Munsif Court, Vaniyambadi.

For Petitioner : Mr.M.Premkumar

For Respondent : Ms.R.T.Sundari

ORDER

This petition has been filed against the fair and decretal orders dated 19.03.2020 passed in C.M.A.No.7 of 2018 on the file of the Sub Court, Vaniyambadi, reversing the fair and decretal orders dated



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06.12.2017 in I.A.No.290 of 2017 in O.S.No.58 of 2017 on the file of the District Munsif Court, Vaniyambadi.

2.The revision petitioner is the plaintiff in O.S.No.58 of 2017 on the file of the District Munsif Court, Vaniyambadi. He filed the suit for declaration of his title to the suit properties morefully described in the plaint as punja land in S.Nos.263/1 (0.05 cents), 236/4 (0.35 cents), 263/15 (0.02 cents), 264/4 (0.02 cents), 263/20 (0.63 cents) and 264/13 (0.05 cents) of Avarangkuppam Village, Pullur Firka, Vaniyambadi Taluk, Vellore District. He also prayed for a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit properties. Along with the plaint he filed I.A.No.290/17 praying for grant of ad-interim injunction. The respondent/defendant filed his counter and after full contest, the learned District Munsif, Vaniyambadi, allowed I.A.No.290/17 on the following grounds :

- 1) The Advocate Commissioner in his report has stated that the property of the respondent/defendant does not fit in with the suit



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2) The respondent/defendant did not file his sale deed before the Court and he did not also raise any objection to the Advocate Commissioner's report.

3) The plaintiff filed a petition before a Taluk Office for measuring his property described in a Will executed by his grandfather A.V.Chakravarthi in favour of his two sons (one of whom is the father of the petitioner/plaintiff) and all his grandsons including the petitioner/plaintiff and also the release deed executed by his father Ramamurthy in his favour.

4) Thus the plaintiff has proved his possession over the suit property.

Aggrieved over the same, the defendant filed C.M.A.No.7/2018 before the Sub Court, Vaniyambadi. The learned Subordinate Judge after hearing both sides allowed the C.M.A.No.7/2018 and set aside the orders of the trial Court as against which the present Civil Revision Petition is filed by the plaintiff.



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3.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 be indicated.

4.Heard Mr.M.Premkumar, learned counsel appearing for the revision petitioner and Ms.R.T.Sundari, learned counsel appearing for the respondent.

5.The plaintiff claims title and possession over the suit property through a Will dated 05.03.1997 allegedly executed by his grandfather A.V.Chakravarthi Naidu. According to him, the 'A' schedule property mentioned in the Will (suit properties) were bequeathed to him and his father Ramamurthy Naidu and that his father executed a registered release deed dated 04.01.2012 in his favour. His further contention is that he has been in absolute possession and enjoyment of the suit properties.



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6.The contention of the respondent/defendant is that he purchased 10 cents of land in S.No.263/4 from A.V.Chakravarthi Naidu (who is his senior paternal uncle) and his younger son Sivaraj (paternal uncle of the plaintiff) through a sale deed dated 05.10.1987 and that he has been in possession of 10 cents of the said land ever since his purchase.

7.In the trial Court, no oral and documentary evidence was adduced by either side. An Advocate Commissioner was appointed by the trial Court to measure the suit properties with the help of a taluk surveyor. During the inspection the respondent's wife appeared to have handed over a sale deed to demarcate the respondent's property measuring 10 cents in S.No.263/4. The taluk surveyor after going through the said document opined that the boundary description in the said document does not fit in with the property on ground and therefore, the same cannot be measured.



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8.At the outset, it may be observed that the plaintiff claims title and possession over the entire suit properties. The defendant claims to have purchased 10 cents of land in S.No.263/4 through a registered sale deed dated 05.10.1987 from Chakravarthi Naidu and father of the plaintiff. This sale deed is prior to the execution of Will by Chakravarthi Naidu. It is also seen from the written statement that the father of the plaintiff had executed a sale deed dated 19.09.1994 in favour of one Rajavelu in respect of S.Nos.263/15, 263/20 who in turn executed a sale deed in favour of one Perumal. These aspects have not been refuted by the plaintiff by way of filing a reply statement. He did not also adduce any oral/documentary evidence to show his possession over the entire extent of all the survey numbers (suit properties). The Lower Appellate Court had observed that subsequent to the execution of the sale deed in favour of the defendant, the plaintiff's grandfather does not have any right to execute a Will in favour of his sons and grandsons. It is pertinent to point out that the respondent/defendant did not file a copy of his sale deed before the trial Court. In any event the petitioner/plaintiff has not



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adduced any evidence to show his possession over the entire extent of the suit properties.

9.Any interim injunction or temporary injunction requires the resolve of three tests as laid down below :

- 1) Prima facie case presented by the plaintiff.
- 2) Balance of convenience (favoured on or at par with the plaintiff)
- 3) If such a prayer for an injunction is not granted, the plaintiff will face a serious and terrible loss.

Order XXXIX Rule 1 CPC reads thus :

"Order-XXXIX, Rule-1. Cases in which temporary injunction may be granted.- Where in any Suit it is proved by affidavit or otherwise—

(a)that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or

(b)that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c)that the defendant threatens to dispossess, the plaintiff or



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otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders."

The burden of establishing the three ingredients for granting of temporary injunction is on the plaintiff. In the instant case, as observed earlier, the petitioner/plaintiff did not adduce any evidence to show his possession over the entire extent of the suit properties especially when the defendant in his written statement had contended that some items of the suit properties were alienated by the plaintiff and his father and that he had purchased 10 cents of land in S.No.263 through a registered sale deed dated 05.10.1987. The rival submissions made by both the parties can be resolved only after full fledged trial and in the facts and circumstances, I do not see any reason to allow this Civil Revision Petition.



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

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Index: Yes/No
Internet: Yes/No
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R. HEMALATHA, J.

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To

- 1.The Sub Court, Vaniyambadi.
- 2.The District Munsif Court, Vaniyambadi.
- 3.The Section Officer, VR Section, High Court, Madras.

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