



C.R.P.(NPD).No.2769 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD).No.2769 of 2021

&

C.M.P.No.20168 of 2021

1.R.Deepa

2.V.Ravi

...Petitioners

Vs

Raja Anand

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 24.07.2020 passed in I.A.No.2 of 2019 in O.S.No.1043 of 2014 on the file of the III Additional District Munsif Court, Salem.

For Petitioners : Mr.P.Jagadeesan

For Respondent : Mrs.Chitra Sampath
Senior Counsel
for Mr.T.S.Baskaran



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ORDER

Challenging the order passed in I.A.No.2 of 2019 in O.S.No.1043 of 2014 by the learned III Additional District Munsif, Salem, the 3rd and 4th defendants as the revision petitioners are before this Court. The plaintiff in the suit is the respondent herein. It is necessary to set out the facts in order to appreciate the issue on hand. The parties are referred in the same litigative status as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.1043 of 2014 on the file of the Principal District Munsif, Salem for the following reliefs:

“a) declare the sale deed under Document No:2337/2011 on the file of the III joint Sub Registrar, Salem executed by the 2nd defendant in favour of the 3rd defendant



is null and void;

b) declare the sale deed under Document No:2338/2011 on the file of the III joint Sub Registrar, Salem executed by the 2nd defendant in favour of the 4th defendant is null and void;

c) Granting permanent injunction against the defendants by restraining the defendants and their men, agents, and servants from in any manner disturbing the peaceful possession and enjoyment of the suit properties of the plaintiff particularly not to lock and not to obstruct the XY gate mentioned in the plaint rough plan.

d) Granting permanent injunction against the defendants by restraining them and their men, agents, and servants from in any manner put up any construction over vacant land as well as in the cart track portion as in mentioned in 2nd item of the suit property .



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e) Restraining the defendants and their men, agents and 4 servants from in any way alienating or encumbering the suit Properties to third parties by means of permanent injunction

f) awarding the cost of the suit to the plaintiff; and

g) granting such other relief or reliefs as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice”

3. It is the case of the plaintiff that the suit property belonged to one Radhabai Ammal, wife of late Ramalingam Chettiar, under a registered sale deed dated 02.02.1996. The plaintiff's grand father Siddiyan and Ramalingam Chettiar were brothers. The 1st defendant is the younger brother of the plaintiff's father Ganesan. The 1st defendant is the adopted son of Radhabai Ammal and Ramalingam Chettiar by virtue of an adoption deed dated 09.06.1976. Radhabai Ammal in a



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sound disposing state of mind had bequeathed the suit property in favour of the plaintiff by a registered Will dated 16.11.1983. Under the Will, the said Radhabai Ammal had given an absolute title to the plaintiff with reference to the 1st Item of the suit property and 2nd Item of the property was kept by her for her legal heirs. She had also set apart a land for a common pathway, to enjoy the vacant land, which is described as 2nd item of the suit property.

4. On 14.10.1987, Radhabai Ammal passed away and the Will dated 16.11.1983 came into operation. Door No.417 B mentioned as 1st item of the suit property was further subdivided into S.Nos.417/C to 417/F and all the revenue documents had also been mutated in the name of the plaintiff. The plaintiff has also started exercising absolute right over the suit property by mortgaging the properties etc.,



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5. Nearly 12 years after the death of Radhabai Ammal, the 1st defendant had fraudulently created a Will dated 15.06.1987 with an ulterior motive of knocking away the property from the plaintiff. On the basis of this bogus Will, the 1st defendant had filed the suit O.S.No.74 of 1999 on the file of the Additional District Munsif I, Salem. The suit was contested seriously by the plaintiff and the 1st defendant and after a full trial, the suit was dismissed on 01.12.2006.

6. Against the said Judgement and Decree, the 1st defendant had filed an appeal before the I Additional Subordinate Judge, Salem, who by Judgement and Decree dated 19.01.2009 had allowed the appeal. Aggrieved by the same, the plaintiff had filed S.A.No.305 of 2009 before this Court.

7. Pending the Second Appeal, the 1st defendant had created a bogus power of attorney in favour of the 2nd defendant dated



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24.12.2010 and on the basis of this power of attorney, property had been sold in favour of the 3 and 4th defendants on 03.10.2011.

8. The plaintiff came to learn about the said deed only when there was an obstruction by the defendants on 26.11.2014, when they attempted to obstruct the plaintiff entry into the suit property by locking the gate marked as X Y in the plan. This gate was commonly used by the plaintiff and the 1st defendant. Therefore, the plaintiff has come forward with the present suit.

9. A written statement was filed by the 4th defendant adopted by the 3rd defendant inter alia contending that from the date of purchase, they have been in open and continuous possession of the suit property and it was only these defendants who were paying the taxes in respect of the suit properties.



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10. The 3rd and 4th defendants have had also pleaded that they are the bonafide purchasers for value and even if it is presumed that the suit property is purchased pending the Second Appeal, they are only the pendente lite purchasers. These defendants had also further alleged that the plaintiff and the 1st defendant had collusively filed the suit.

11. Meanwhile, on 28.10.2015 the Judgement and Decree was pronounced in the S.A.No.305 of 2009, in and by which the Second Appeal filed by the plaintiff herein was allowed and the Judgement and Decree in A.S.No.52 of 2007 was set aside.

12. Thereafter, the plaintiff has filed the impugned application for a decree based upon the admission made by the defendants 3 and 4 in their written statement and on the basis of the Judgement and Decree in S.A.No.305 of 2009. The plaintiff had contended that by the Judgement and Decree in S.A.No.305 of 2009, the plaintiff's absolute



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right to the property has been established and the Will projected by the 1st defendant had been rejected as a fraudulent one. Consequently, the sale deed in favour of the 3rd and 4th defendants, made on the strength of this fraudulent Will is void and is liable to be set aside.

13. The plaintiff would further submit that the right title and interest of the plaintiff over the suit property has already been adjudicated in the suit O.S.No.74 of 1999 and confirmed by this Court in S.A.No.305 of 2009. Therefore, the plaintiff would contend that he should not be put through the rigour of a full trial and the decree be passed on the admission of the facts.

14. The 3rd and 4th defendants have filed a counter refuting the claim of the plaintiff and submitted that the provisions of Order XII Rule 2 read with Rule 6 of the Code of Civil Procedure would not be attracted as no grounds have been made out. The defendants 3 and 4



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would submit that they are in possession of the property and paying the taxes in respect thereof. The 3rd and 4th defendants would further state that since they are not parties to S.A.No.305 of 1999, the said Judgement is not binding on them. For these reasons they sought for the dismissal of the petition.

15. The learned III Additional District Munsif, Salem by his order dated 24.07.2020 was pleased to allow the said application. It is challenging this order that the 3rd and 4th defendants are before this Court.

16. Mr.P.Jagadeesan, learned counsel appearing on behalf of the 3rd and 4th defendants / revision petitioners would submit that the order decreeing the suit was totally erroneous, since there were other prayers besides the relief of declaring the sale deed as null and void, which had to be considered in detail. The learned counsel would draw the



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attention of the Court to the counter of the revision petitioners where they have stated about the sale deed having been executed in their favour and they having acted upon it without any interruption to date. They have denied the possession of the suit properties by the plaintiff.

17. The learned counsel would also take the Court to paragraph No.10 of the very same counter, wherein, the defendants 3 and 4 have stated that the suit is the result of fraud and collusion between the plaintiff and the 1st defendant to defeat the right of the defendants 3 and 4 over the suit property. He would also submit that the Court below has not taken note of the submission of the defendants 3 and 4 that they were not parties to the earlier proceedings and that the decree in the suit would not bind on them and that the rights of the parties can be established only after a full trial.



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18. The learned counsel would also submit that the Court below has not taken note of the fact that the legal heirs of the 1st defendant have not been brought on record. The sum and substance of the argument of the learned counsel for the 3rd and 4th defendants / revision petitioners is that the provisions of Order XII Rule 2 read with Rule 6 of the Code of Civil Procedure cannot be invoked in the instant case and that the rights have to be established only after the full Trial.

19. Per contra, Mrs.Chitra Sampath, learned Senior Counsel appearing on behalf of the learned counsel for the plaintiff / respondent would draw the attention of this Court to the written statement filed by the defendants 3 and 4, wherein, at paragraph No.6 they have stated as follows:

“6.This defendant further submits that the recitals of above sale deeds are very clear and reveals that these defendants are bonafide purchasers for value. Even if it is



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assumed that those properties are purchased pending suit or appeal, the doctrine of Lis-pendens would apply. Since these defendants are bonafide purchasers, the plaintiff has no locus standi to file this suit for declaration to declare the sale deeds executed in their favour as null and void.”

20. Therefore, the learned senior counsel would contend that by their own making the defendants 3 and 4 had agreed to abide by the decision in the Second Appeal and that they were the pendente lite purchasers. Considering the fact that by the Judgement and Decree in S.A.No.305 of 2009, the right claimed by the vendor of the defendants 3 and 4, namely, the 1st defendant has been found to be a fraudulent claim based on a forged Will, they were not entitled to claim any right over the suit property. The defendants 3 and 4 trace title only under the 1st defendant, therefore, the sale in their favour itself is void. In these circumstances, there is no necessity to push the plaintiff to a full



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Trial. Therefore she would pray that the impugned order be sustained.

21. Heard both the counsel and perused the records.

22. The defendants 3 and 4 claimed a right to the property through the sale deed executed by the 1st defendant in their favour on 03.10.2011 registered as document Nos.2337 of 2011 and 2338 of 2011. The 1st defendant in turn had claimed a right to the property on the basis of the Will dated 15.06.1987. By reason of the Judgement of this Court in S.A.No.305 of 2009, the said Will has been found to be a fraudulent one. Therefore, any right which emanates from a document which is a creature of fraud will not confer any right upon the person claiming under the said document.

23. Admittedly, the defendants 3 and 4 are claiming under this Will. The 3rd and 4th defendants in their written statement have also



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impliedly agreed to abide by the Judgement and Decree in S.A.No.305 of 2009. It is not the case of the defendants 3 and 4 that they are not aware about the proceedings between the plaintiff and 1st and 2nd defendants. On the contrary they have purchased the property being fully aware about the said proceedings. The provisions of Order XII Rule 6 of the Code of Civil Procedure would read as follows:

“[6. Judgment on admissions.—(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the



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judgment and the decree shall bear the date on which the judgment was pronounced.]

24. Considering the fact that the 3rd and 4th defendants have admitted the earlier proceedings and admitted that they are pendente lite purchasers, they are bound by the result in the said proceedings. In fact, the fraudulent manner in which the Will which is the basis on which the defendants 3 and 4 placed their right has been created is discussed in detail in the Judgement and Decree in S.A.No.305 of 2009 in paragraph No.11, which reads as follows:

“11. Insofar as the proof of execution of the Will is concerned, the burden is on the plaintiff who has propounded the Will Ex. A.9. In the process of proving the Will, the plaintiff had examined P.W.2 and P.W.3 who are the attestors to Ex. A.9. It is the definite case of the plaintiff / respondent that the previous Will Ex. B.50 was



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cancelled in Ex. A.9. However, the appellant / defendant had contended that Ex. A.9 is a forged document. According to the learned counsel for the appellant, the First Appellate Court failed to consider the contradictions in the depositions of the attestors examined as P.W.2 and P.W.3. Admittedly, Ex. A.9 is an unregistered Will. The reason for the suit being filed belatedly was attributed to the ignorance of the plaintiff about Ex. A.9 Will. Though the plaintiff had not taken active participation in execution of the Will, the burden is on him to establish the genuineness of the same. P.W.2 one Thangavelu had categorically deposed that the plaintiff was present at the time of execution of the Will whereas the plaintiff has pleaded no knowledge about the same. Similarly, the other witness P.W.3 had deposed that Ramalingam Chettiar, who is the husband of the testatrix, was present



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along with her when Ex. A.9 was executed. When admittedly Ramalingam Chettiar died on 18.9.1983 and the Will was executed on 15.6.1987, it is un-understandable as to how could Ramalingam Chettiar be present at the time of execution. Ironically, in the said Will itself it is stated that Ramalingam Chettiar was dead. Therefore, the deposition of P.W.3 is also not believable. The plaintiff had also not explained the delay in producing the Will before the Court. There is no explanation from the plaintiff for the suit being filed after several years.”

In the light of such a clear and categoric finding, there is no necessity to push the plaintiff to the rigour of another full fledged trial.

25. The second argument made by the learned counsel was that apart from the relief for declaration, the relief of permanent injunction has also been sought for, therefore, it has to be contested and proved



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since the defendants 3 and 4 have been put in possession of the property and are in possession of the same from the date of the sale. In this regard, reference need to be made to the Judgement and Decree in S.A.No.305 of 2009, wherein, in paragraph No.12, this Court has held as follows:

“12. The suit properties are the land and building and the property tax receipts produced by the plaintiff are all in the name of Radha Bai Ammal. As seen earlier, the defendant had produced Exs. B.2 and B.6 to B.8 which are communications between the defendant and the Tamil Nadu Civil Supplies Corporation, L&T Limited, etc. to substantiate that he had been dealing with the suit properties by leasing them out. From the above documents, it is clear that the defendant has been in possession of the properties and that the plaintiff has not established his case. However, the First Appellate Court,



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being the final Court of facts, had not discharged the duty expected of it.”

26. Therefore, in the light of the categoric finding of this Court that possession is with the defendant therein who is the plaintiff in the instant proceedings the contention made by the defendants 3 and 4 cannot be countenanced. Therefore, I do not find any reason to interfere with the order of the learned III Additional District Munsif, Salem, accordingly, the Civil Revision Petition is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

16.02.2022

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Index : Yes/No

Speaking order/non-speaking order

To

1.The III Additional District Munsif,
Salem

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P.T.ASHA, J.,

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