



CRP (MD) No.1142 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

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and

CMP (MD) No.4678 and 4769 of 2022

1.M.Jeyaraj

2.J.Sugumaran

... Petitioners

Vs

1.K.R.Prem Kumar

V.Mayandi Thevar (died)

2.Annathai

3.Alagammal

4.Lakshmi @ Jaya

5.R.Sitaram

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the award passed in LA.No.103 of 2020 by the Lok Adalat (organised by District Legal Services Authority, Madurai) in OS.No.162 of 2019 on the file of the I Additional District Court, Madurai dated 08.02.2020 by allowing this civil revision petition.



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For Petitioners : Mr.V.Kathirvelu,
Senior Counsel for
Mr.M.Kannan
For Respondents : Mr.K.Sudalayandi

ORDER

This civil revision petition is filed as against the award passed in Lok Adalat in LA.No.103 of 2020 by the Legal Services Authority, Madurai in OS.No.162 of 2019 on the file of the I Additional District Court, Madurai, dated 08.02.2020.

2.The suit in OS.No.162 of 2019 was filed by the first respondent as against respondents 2 to 4 for specific performance based on a sale agreement dated 07.10.2009. The 5th respondent in the capacity of power agent of respondents 2 to 4 and also the original defendant one Mayandi Devar. The father of respondents 2 to 4 executed a sale agreement in favour of the first respondent/ plaintiff. However he did not come forward to execute the sale deed and therefore, the suit for specific performance was filed by the first respondent / plaintiff. A memo was



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filed that the second defendant M.Mayandi Devar, father of respondents 2 to 4, died and the respondents 2 to 4 are the legal heirs of the deceased Mayandi Devar. Based on the memo, the suit was proceeded further and it was also referred to Lok Adalat on the request of the parties and on consent that respondents 3 to 5 were willing to execute sale deed in favour of 1st respondent / plaintiff, award was also passed directing respondents 3 to 5 to execute sale deed in favour of 1st respondent. Sale deed was also executed in favour of 1st respondent on 29.01.2021 by 5th respondent in favour of 1st respondent.

3.The first petitioner claiming to be son of the said Mayandi Devar, sought leave of this Court to file this civil revision petition that the suit itself is a collusive suit and orders have been obtained by misrepresentation and fraud.

4.Considering the reasons stated in the application and after hearing the arguments of the petitioners, leave was granted to the petitioners and notice was also ordered to the respondents.



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5.The learned Senior Counsel appearing for the petitioners has made his submission as follows:

i.The suit in OS.No.162 of 2019 was filed for specific performance based on the sale agreement dated 07.10.2009 executed by 5th respondent in the capacity as power agent of respondents 2 to 4 with regard to the suit schedule property in survey No.465/4 situated at Madakulam Village, Thiruppankundram Taluk, Madurai district.

ii.The suit schedule property was purchased by the first petitioner's father Mayandi Devar along with his wife Sivanammal by registered sale deed dated 10.07.1956. After purchasing the property Sivanammal orally relinquished her right over the property and as such from 1960 the entire property was owned and enjoyed by Mayandi Devar. All the revenue records are standing in the name of Mayandi Devar. Mayandi Devar and Sivanammal, had four daughters and one son. 1st petitioner is their only son. Respondents 3 to 5 are the daughters of the said Mayandi Devar and Sivanammal. The mother of 1st petitioner, Sivanammal passed away in the year 1972.



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While so, the father Mayandi Devar bequeathed the property to his son / 1st petitioner and his grandson / 2nd petitioner by way of a registered Will dated 10.12.2001. Mayandi Devar passed away on 10.09.2002. Hence the Will came into existence, ever since the petitioners are in exclusive possession of the property and became absolute owners of the property. The revenue records are also mutated in the name of the petitioners and these petitioners have also been paying all the necessary taxes to the Government in their respective names for the past 20 years.

iii. The petitioners came to know about the encumbrance created by 5th respondent on 29.01.2021 and only then he came to know about the suit filed by 1st respondent in OS.No.162 of 2019 and the award obtained by them fraudulently and by misrepresentation in Lok Adalat on 08.02.2020.

iv. The above suit was filed based on the sale agreement dated 07.10.2009 as if Mayandi Devar, who died on 10.09.2002, has executed a sale agreement in favour of 5th respondent along with respondents 2 to 4. The suit was



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filed for specific performance that they did not come forward to execute the sale deed. Pending the suit, a memo was filed by 1st respondent that Mayandi Devar / 2nd defendant in the suit died and respondents 2 to 4 are his daughters and they alone are the legal heirs of deceased Mayandi Devar. The said Memo was also accepted by the Court without verifying the legal heir certificate of respondents 3 to 5 and without even following the procedure as per Order 22 of CPC while bringing in legal heir of the deceased. The collusive settlement was arrived at between 1st respondent as well as respondents 2 to 2, as if, they are the legal heirs of deceased of Mayandi Devar and they are incline to sell the property based on the sale agreement executed by 6th respondent on 07.10.2009.

v. The power of attorney was given to the respondents on 07.05.1997. One of the executants of the power of attorney, Mayandi Devar died on 10.01.2002. The 5th respondent executed a sale agreement on 07.10.2009, after the demise of Mayandi Devar. As per the sale agreement, the time of execution for sale deed was only three months. However, the suit was filed only in the year 2019, which is also barred by limitation.



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vi.1st petitioner has also filed a suit for permanent injunction as against 5th respondent in OS.No.108 of 2009 before the District Munsif, Madurai and it was decreed on 07.04.2013. 5th respondent has not preferred any appeal and thus the decree became final. The award in OS.No.162 of 2019 in the Lok Adalat has been obtained by collusion and by suppressing the above material facts and also suppressing that this 1st petitioner is also a legal heir of Mayandi Thevar.

6.The learned Senior Counsel has also relied on the legal heir certificate issued by the Tahsildar, Tiruparangundram, on 05.03.2022.

7.The learned Counsel for the respondent submits that the suit property belongs to respondents 2 to 4 and as per the sale agreement the respondents have executed the sale deed and the petitioners are not having any locus to challenge the award passed with regard to the suit schedule property.



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8.This Court considered the rival submissions and perused the materials placed on record.

9.The suit schedule property was originally purchased in the year 1956 in the name of Mayandi Devar and Sivanammal. As per legal heir certificate produced before this Court, it appears that 1st petitioner is son of Mayandi Devar and respondents 3 to 5 are the daughters of Mayandi Devar. Sivanammal expired in the year 1972. According to the petitioners, even during her life time, she orally relinquished her right over the property. The petitioners also claim that all the revenue records stand in the name of Mayandi Devar. Mayandi Devar also executed a registered sale deed in favour of the petitioners on 10.12.2001. Later Mayandi Devar died on 10.09.2002. From then according to the petitioners, they are in possession of the property and all the revenue records stand in their names. While so respondents 2 to 4 have executed a sale agreement dated 07.10.2009 based on the power given to the 5th respondent on 07.05.1997. Though Mayandi Devar is said to be a signatory to the power, he died in the year 2002 and the sale agreement was executed on 17.10.2009. The suit in OS.No.162



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of 2009 was filed based on the sale agreement dated 07.10.2009, without impleading these petitioners. Though Mayandi Devar was not alive, even at the time of filing of the suit, he was arrayed as defendant No.2 and by way of memo, respondents 3 to 5 were brought on record as legal heirs of Mayandi Devar and without following the procedure contemplated under Section 22 of CPC.

10.This Court is satisfied that the order has been obtained in the Lok Adalat by committing fraud and by making misrepresentation and therefore this Court sets aside the award challenged herein. The matter shall be referred to the Court for fresh consideration and the parties are at liberty to contest the case before the Court in the manner known to law.

11.In the result, this civil revision petition is allowed. No cost. Consequently connected miscellaneous petition stands closed.

16.11.2022

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To

I Additional District Judge,
Madurai.



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B. PUGALENDHI, J.

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