



CRP (MD) No. 2548 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 20.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

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and

CMP (MD) No. 12513 of 2022

Marimuthu

... Petitioner

Vs

1. Theivanai

2. Velmurutan

3. Muthumari

4. Saleswari

5. Minor. Joshina Sri

Minor 5th respondent represented
through her mother and natural
guardian 4th respondent

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227
of the Constitution of India, to call for the records
pertaining to the judgment and decreetal order dated
05.07.2022 in CMA.No.7 of 2021 on the file of the Sub
Court, Thirumangalam which confirmed the fair and decreetal



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order dated 26.08.2021 in IA.No.1 of 2021 in OS.No.136 of 2021 on the file of the District Munsif Court, Thirumangalam and to set aside the same.

For Petitioner : Mr.R.Gowrishankar

ORDER

This civil revision petition is filed as against the fair and decreetal order dated 05.07.2022 passed in CMA.No.7 of 2021 by the Sub Court, Thirumangalam, confirming the fair and decreetal order dated 26.08.2021 passed in IA.No.1 of 2021 in OS.No.136 of 2021 by the learned District Munsif, Thirumangalam.

2.The petitioner is the defendant in OS.No.136 of 2021, which was filed by respondents / plaintiffs for the relief of declaration and injunction with regard to the suit property in Survey No.155/1. Pending the suit they have also filed an application under Order 39 Rules 1 and 2 of CPC for injunction restraining this petitioner from



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interfering with the peaceful possession and enjoyment of the suit property. The said application was allowed by the trial Court by order dated 26.08.2021. As against that order, the petitioner has preferred an appeal before the Sub Court, Thirumangalam in CMA No.7 of 2021 and the same was dismissed by judgment dated 05.07.2022. Challenging the same, the present civil revision petition is filed.

3.The learned Counsel for the petitioner submits that the property belongs to the petitioner's father Periyasamy Thevar. He purchased the property from one Navaneetha Krsihanan by registered sale deed dated 03.05.1979. However forged document has been created as if the petitioner's father sold the property to the husband of the first plaintiff by sale deed dated 04.10.1991. The petitioner claims that they are not aware of the document dated 04.10.1991 and it is a void document, which has been created by the said Periyasamy Thevar for himself and on behalf of his minor son.



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4. According to the learned Counsel for the petitioner, the petitioner is aged about 59 years old now and at that time of registration of the alleged document, he was 28 years old. However the document has been created by showing the petitioner as a minor and therefore it is a forged and created one. The trial Court without considering the same, granted the relief of injunction pending the suit. Both the courts have relied on certain kist receipts and electricity connection receipts to arrive at a conclusion that the respondents / plaintiffs have made prima facie case in their favour. The suit was filed with averment that it is a barren land. However the respondents subsequently claimed that there is a house and they are also having electricity connection. The respondents have not approached the court with clean hands and the Court ought not to have granted injunction in their favour.

5. Heard the learned Counsel for the petitioner and perused the materials placed on record.



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6.The respondents / plaintiffs have filed the above suit in OS.No.136 of 2021 as against the petitioner/defendant for the relief of declaration and injunction with regard to the suit schedule property in survey No.155/1. Pending the suit, they also filed an application in IA.No.1 of 2021 under Order 39 Rules 1 and 2 CPC for interim injunction. The respondents / plaintiffs have relied on certain documents in support of their contentions. Considering the materials, the Courts found that the plaintiffs have made out a *prima facie* case, allowed the application in IA.No.1 of 2021. As against the order, the petitioner has also filed an appeal before the Sub Court, Thirumangalam and the same was dismissed by order dated 05.07.2022.

7.The respondents / plaintiffs claim title over the suit schedule property that the suit schedule property belongs to Navaneethakrishnan, which was purchased by one Periyasamy Thevar, father of the petitioner / defendant in the year 1979 by document Ex.B1. Thereafter he sold the



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property in favour of one Gurusamy Thevar, the husband of the first plaintiff vide Ex.P2. The petitioner / defendant has also filed a separate suit for declaration of the sale deed dated 04.10.1991 executed by Periyasamy Thevar in favour of the Gurusamy Thevar as null and void and the same is also pending in OS.No.174 of 2021. The respondents/ plaintiffs have also produced certain documents including receipt for electricity charges for the house constructed in the suit schedule property. The Court based on the documents produced has granted interim injunction

8.The trial Court has exercised its power for grant of temporary injunction pending the suit depending upon the facts and circumstances of the case. It is to be noted that the grant of injunction is the discretion of the court. Under such circumstances, this Court is not inclined to interfere with the orders of the Court.

9.It is reported that the petitioner has also filed a suit in OS.No.174 of 2021 before the District Munsif Court



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to declare the document dated 04.10.1991 as null and void, which is also relating to the same property and therefore, this Court directs the learned District Munsif, Thirumangalam to try both suits in OS.No.136 of 2021 and 174 of 2021 either jointly or simultaneously, depending upon its convenience and shall decide the suits as expeditiously as possible without being influenced by any of the observation of this court in this order.

10.The civil revision petition is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.

20.12.2022

dsk

To

The District Munsif,
Thirumangalam.



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B. PUGALENDHI , J.

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