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C.R.P.No.665 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Revision Petition No.665 of 2020
and
CMP.No.3461 of 2020

1. G.Damodaran
2. Thayarammal

.. Petitioners

Versus

Srinivasan @ Srinivasalu

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to to set aside the order and decreetal order dated 19.10.2019 passed in P.O.P No.30 of 2016 in O.S.No.278 of 2019 on the file of the learned Principal Subordinate Judge Mayiladuthurai.

For Petitioners : Mr. S. Sadasharam
For Respondent : Mr. B.Jawahar

ORDER

This Civil Revision Petition is filed against the order and decreetal order dated 19.10.2019 passed in POP No.30 of 2016 in O.S.No.278 of 2019 on the file of the learned Principal Subordinate Judge, Mayiladuthurai, declaring the respondent herein as pauper.



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2. The revision petitioners herein are the respondents in Pauper Original Petition (POP) No. 30 of 2016 on the file of the Sub Court, Mayiladuthurai.

3. The sole respondent in this revision petition, as Plaintiff, has filed a suit for the relief of permanent injunction restraining the revision petitioners from cultivating the suit property and to hand over the suit property to him. Further, a declaratory relief was sought for to declare that the plaintiff is the owner of the A-schedule property and the settlement dated 20.11.2006 executed by the first respondent in favour of his wife, the second respondent will not bind him in any manner. However along with the suit, the plaintiff has filed the petition in POP.No.30 of 2016 by stating that the property in question was in possession and enjoyment of his father of Krishnasamy Naidu. After his death in the year 1982, it was in enjoyment by his mother, viz., Dhanam Ammal. On 01.07.2011, the plaintiff's mother Dhanam ammal died and thereafter, in the year 1994, he had entrusted the possession of the property to the first defendant, who is none other than his father's brother and left the suit Village for employment purpose. When he came back in the year 2014, he



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demanded the property to be entrusted to him. However, the defendants evaded and avoided to do so. Suspecting foul play, the respondent/ plaintiff herein applied for encumbrance certificate and came to know that a settlement deed dated 20.11.2006 was executed by the first revision petitioner in favour of the second revision petitioner. The respondent herein also stated that he had given complaint on 06.05.2015 to the Land Grabbing Officer and an enquiry was conducted. During the course of the enquiry, the first revision petitioner undertook to hand over the vacant possession of the property. However, he did not do so. Therefore, the suit came to be filed for the relief stated above. Along with the suit, the Pauper Original Petition was filed contending that the respondent herein is not resourceful enough to pay the Court fee and he is not gainfully employed for the purpose of instituting the suit. To maintain the suit, payment of Court fee is necessary. However, as he does possess any money for paying the Court fee, he has filed the Pauper Original Petition. It is stated that merely because he does not possess money to pay the Court fee, he should not be left remediless. It is stated that institution of the present suit is very much necessary especially when a cloud has been created over the right of his property.

4. In the Pauper Original Petition, the revision petitioners



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herein filed a counter affidavit contending that the respondent is a man of means. It is stated that the respondent is earning a sum of Rs.25,000/- per month and he is capable of paying the Court fee. Above all, the respondent herein is the owner of the land and building worth Rs.1 Crore. While so, he cannot be termed as a pauper and accordingly, the revision petitioners prayed for dismissal of the pauper original petition.

5. Before the trial Court, both sides have let in evidence. The respondent herein examined himself as P.W.1 and documents were marked as Ex.P1. and Ex.P2. On the other hand, the first revision petitioner herein examined himself as R.W.1 and documents were marked as R.1 to R.4.

6. The trial Court on appreciation of the documentary evidence allowed the pauper original petition by declaring the respondent herein as pauper. Aggrieved by the same, the present revision petition is filed.

7. Heard the learned counsel for the petitioners as well as the learned counsel for the respondent and perused the materials placed on record.

8. It is seen from the order, which is impugned in the Civil Revision Petition that the first revision petitioner herein was cross examined



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before the trial Court. During the cross examination, it was stated that Ex.R.1 and R.2 are patta and joint patta respectively stands in the name of respondent herein dated 14.10.2011. Ex.R3, sale deed, was also produced to show that the property covered thereon stands in the name of the respondent herein. However, during the course of examination, the first revision petitioner admitted that the property covered under Ex.R.1, viz., the land in S.No.281 was already sold by the respondent herein. Similarly, the land in S.No.286/4 was subjected to mortgage by the respondent herein. As regards, the property covered under Ex.R.2 and R.4, the trial Court pointed out that they are joint patta stands in the name of the respondent and others and therefore, the respondent cannot assert an exclusive right over those property or he can mortgage those property to realise money. It is on the basis of the admission of the first revision petitioner during his cross-examination, he trial court has concluded that the revision petitioners herein are not in a position to point out, by acceptable evidence, that the respondent herein is resourceful enough to pay the Court fee. On the other hand, the respondent herein has stated that he had left the suit Village in the year 1994 for avocation and returned back only in the year 2011. From 2011, the respondent claimed that he was not gainfully employed anywhere and the amount he earns is just sufficient to meet both ends. Having regard to the above factual position, the trial Court, in the



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opinion of this Court, has rightly declared the respondent herein as Pauper.

Consequently, the trial Court directed to number the suit filed by the respondent herein. It is needless to say that it is always open to the revision petitioners herein to file a written statement in the suit filed by the respondent herein and contest it on merits and in accordance with law, if they are advised to do so.

9. In the result, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

30.01.2023

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Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

1. The Principal Subordinate Judge Mayiladuthurai.

2. The Section Officer,
V.R. Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN,J.

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