



C.R.P.No.3786 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.3786 of 2015
and C.M.P.Nos.1 & 2 of 2015

Madhuudhan

Rep. by Power Agent D.Manjulatha

... Petitioner

[Power Agent amended vide order dated 07.09.2015 made in M.P.No.1 of 2015 in CRP SR No.70659 of 2015]

Vs.

1.Vijaianandh

Rep. by his Power Agent A.Subrmanian

2.A.Subramanian

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the suit in O.S.No.393 of 2015 on the file of the District Munsif of Poonamallee seeking to struck off the same.

For Petitioner : M/s.R.Krishnasamy

For Respondents : Mr.P.Valliappan
: for R1 and R2



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ORDER

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This Civil Revision Petition has been filed by the defendant under Article 227 of the Constitution of India to strike off the suit pending in O.S.No.393 of 2015, on the file of the learned District Munsif, Poonamallee.

2.The case of the petitioner is that he is the absolute owner of the suit property measuring an extent of 2400 Sq. Ft. Originally this property belonged to the grandfather of the petitioner by virtue of a registered Sale Deed that was executed in the year 1992. He died intestate and hence, it devolved upon the petitioner and his mother. The mother settled her share of the property in favour of the petitioner by a registered Settlement Deed dated 08.05.2015 and thereby, the petitioner is claiming to be the absolute owner of the property.

3.The further case of the petitioner is that during the life time of his grandfather, a suit came to be filed by one Santhakumari in O.S.No.148 of 2010 against the grandfather and others claiming for the relief of title and for permanent injunction with respect to larger extent of lands including the suit property. This suit was contested and during the pendency of the suit, initially an order of interim



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injunction was passed and subsequently, it was vacated and ultimately, the suit itself came to be dismissed by Judgment and Decree dated 25.11.2013.

4. In spite of the dismissal of the above suit, once again the said Santhakumari through the respondents attempted to create a cloud over the title and interfere with the possession and enjoyment of the property and hence, a police complaint was given. Apart from this complaint, various other persons whose properties were also attempted to be dealt with, also gave a police complaint and an FIR came to be registered in Crime No.234 of 2014 and Crime No.21 of 2015. The 2nd respondent Mr.A.Subramaniyan was also arrested in the course of investigation. The said Subramaniyan filed a bail petition before this Court in CrI.O.P.No.9005 of 2015. During the pendency of the bail petition, an affidavit of undertaking was filed by the said Subramaniyan to the effect that he will not interfere with the portion of the suit property. Based on the undertaking given by the said Subramaniyan, the Criminal Original Petition was allowed and he was enlarged on bail by an order dated 17.04.2015.



5.The grievance of the petitioner is that after giving such an undertaking before this Court to the effect that there will be no interference to the suit property, the said Subramaniyan acted as an agent to the 1st respondent and filed the present suit in O.S.No.393 of 2015 seeking for the relief of permanent injunction. According to the petitioner, the suit itself is a clear abuse of process of law and it goes against the undertaking that was given before this Court and hence, the present Civil Revision Petition has been filed to strike off the suit.

6.Heard Mr.R.Krishnasamy, learned counsel appearing on behalf of the petitioner and Mr.P.Valliappan, learned counsel appearing on behalf of the respondents.

7.The learned counsel for the petitioner submitted that the earlier ground of litigation pertaining to the suit property and larger extent of lands came to an end by virtue of the dismissal of the suit through Judgment and Decree dated 25.11.2013 made in O.S.No.1148 of 2016. Thereafter, once again attempt was made to create a cloud over the title to the property and to interfere with the possession and enjoyment of the property and the same resulted in lodging police



complaint. During the pendency of the investigation, the 2nd respondent was also arrested and he gave an undertaking before this Court that he will not interfere with the possession and enjoyment of the property. After giving such an undertaking, the suit was filed thereafter, and the same amounts to abuse of process of law, which requires the interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

8.Per contra, the learned counsel for the respondents submitted that the pending criminal case has nothing to do with the present litigation, since the issue involved in the suit pertains to the civil rights of the parties. The learned counsel contended that the pending criminal case and the order passed in the bail petition cannot be put against the respondents and they cannot be prevented from prosecuting their valuable civil rights. It was further submitted that if at all the petitioner has a valid right and title over the suit property, the same should be established only in the pending suit and there is absolutely no ground to stall the proceedings pending before the Court below in O.S.No.393 of 2015.

9.This Court has carefully considered the submissions made on either side



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and also the materials available on record.

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10.It is clear from the records that on an earlier occasion, an attempt was made by one Santhakumari to claim right and title over a larger extent of property which also included the suit property. In the said suit, the grandfather of the petitioner contested the suit as the 4th defendant. This suit came to be dismissed for default through Judgment and Decree dated 25.11.2013. Thereafter, no steps were taken to restore the suit and the Judgment and Decree became final.

11.The 1st respondent is claiming right over the suit property by virtue of a Sale Deed dated 29.03.2012 executed by the above said Santhakumari. The 1st respondent is represented through his Power of Attorney Agent viz., the 2nd respondent. The father of the petitioner and others gave a police complaint against the 2nd respondent on the ground that he is attempting to create forged documents over the properties and based on the complaint, FIR came to be registered in Crime Nos.234 of 2014 and 21 of 2015. The 2nd respondent was also arrested in the course of investigation. The 2nd respondent filed Crl.O.P.Nos.9005 and 9067 of 2015 before this Court seeking for enlarging him on bail. Insofar as



CrI.O.P.No.9067 of 2015 is concerned, the same pertains to the complaint registered in Crime No.21 of 2015 in which the defacto complainant was the father of the petitioner. The 2nd respondent gave an undertaking before this Court by filing an affidavit to the effect that he will not interfere with the portion of the property belonging to the defacto complainant. It was based on this affidavit of undertaking, bail was granted by this Court by an order dated 17.04.2015. After having given such an undertaking, the 2nd respondent once again institutes a suit in his capacity as a Power Agent of the 1st respondent seeking for the relief of permanent injunction in O.S.No.393 of 2015. He also manages to get an order of interim injunction during the pendency of the suit. On carefully going through the plaint, it can be seen that the respondents have conveniently concealed above the earlier undertaking that was given before this Court.

12.It is clear from the above facts that the present suit that has been instituted by the respondents is a clear abuse of process of Court and the same goes against the very undertaking that was given before this Court by the 2nd respondent. That apart, the earlier attempt that was made by the vendor viz., Santhakumari came to an end on dismissal of the suit in O.S.No.148 of 2010.



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Hence, the present suit is nothing, but a re-litigation and an abuse of process of law and the same requires the interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

13.In the result, the suit in O.S.No.393 of 2015, pending on the file of the learned District Munsif, Poonamalee is hereby struck off and the Civil Revision Petition stands allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

05.01.2023

Internet : Yes ./ No
Index : Yes ./ No
Speaking Order / Non Speaking Order
Neutral Citation Case : Yes ./ No
SSR



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To
The District Munsif,
Poonamallee.



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N. ANAND VENKATESH, J.

SSR

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