



C.R.P. No. 463 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. No. 463 of 2023

S.Udhaya Marthandan,
S/o. V.Subramaniam

... Petitioner

Vs.

1. K.A.Sundarraaj
S/o. Late K.V.Aarumugam

2. The Tamil Nadu Housing Board,
rep.by its Managing Director,
Dharapuram,
Tiruppur Dt.

.. Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, to set aside the fair and decreetal order passed in O.S.SR.No.4673 of 2022, dated 21.09.2022 on the file of learned Subordinate Judge, Dharapuram.

For Petitioner : Mr. K.Anandhraja



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ORDER

Challenging the impugned order passed by the trial judge before numbering the suit in O.S.SR.No. 4673 of 2022 dated 21.09.2022, the plaintiff preferred this Civil Revision Petition.

2. The plaintiff filed a suit against the defendants praying the relief of declaration and other consequential relief. The plaintiff claimed right over the property based on the power deed dated 29.08.2003 as well as unregistered sale agreement executed in favour of petitioner's mother and from that date onwards, he is in possession of the property. Originally, the property was allotted to K.V.Arumugam, father of 1st defendant by the Housing Board allotment order and subsequently, he decided to sell the property and undertake to register the sale deed after obtaining the sale deed in his favour from the 2nd respondent, but the property was illegally transferred in favour of 1st defendant instead of executing the sale deed in favour of plaintiff, legal heir's of Arumugam. Hence, he has filed a suit for declaration as if he is in possession of the property from the year of 1995. But, without considering the plaint averment, the trial judge, before



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numbering the plaint, rejected the same. Now, challenging the said findings, the present Civil Revision Petition has been filed.

3. On perusal of the records, the trial judge taking into consideration of the fact that the sale agreement was executed in the year of 2003, so, the plaintiff is not entitled to claim any right based on the agreement, since it will not confer any title in his favour, as such, the suit is not maintainable and the plaint was rejected by invoking Order VII Rule 11(a) of C.P.C. However, the trial court also verified the latest principles of law and on considering submissions of both sides and on perusal of plaint averment, the trial court rejected the plaint holding that deciding the prayer for declaration of title of plaintiff, which is one of the issue, it needs both oral and documentary evidence and there is no cause of action for the suit, as such, the order of trial judge is totally unwarranted one. Hence, the findings rendered by the trial judge is liable set aside. Accordingly, this Civil Revision Petition is disposed of and the order passed by the trial judge is set aside. The trial court is directed to take the plaint on file within a period of one week from the date of receipt of copy of this order and to dispose the



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suit as early as possible. The trial judge is also instructed not to go into the issues of the suit without any evidence, which would cause irreparable injury and also it would lead to unnecessary multiplicity of proceedings for the public, litigant as well as court proceedings. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

31.03.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

1. The Sub-Judge,
Dharapuram.
2. Managing Director,
The Tamil Nadu Housing Board,
Dharapuram,
Tiruppur Dt.



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T.V.THAMILSELVI, J.

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