



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2022

PRONOUNCED ON : 12.01.2023

CORAM:**THE HONOURABLE Mr. JUSTICE S.SOUNTHAR**

C.R.P.No.1041 of 2022
and CMP.Nos.5333 and 5335 of 2022

- 1.Mrs.Krishnaveni
- 2.Markandan
- 3.Subramani

...Petitioners/Appellants

Versus

Vijaya

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the unjust and autocracy order passed in CMA.No.1 of 2021 against I.A.No.1 of 2020 in O.S.No.102 of 2019, dated 29.11.2021, on the file of the Subordinate Judge, Arakonam.

For Petitioners : M/s.R.Balasubramanian

For Respondent :M/s.G.Thangavel

O R D E R

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The Civil Revision Petition is filed challenging the order passed by the Court below, dismissing the appeal filed by the revision petitioner in CMA.No.1 of 2021, on the file of the Subordinate Court, Arakkonam. The said Civil Miscellaneous Appeal was preferred by the petitioner, challenging the dismissal of his injunction petition filed in I.A.No.1 of 2020 in O.S.No.102 of 2019, on the file of District Munsif Court, Sholinghur.

2. The respondent herein filed a suit for bare injunction against the petitioners in O.S.No.49 of 2000 on the file of the District Munsif, Arakkonam, the same was transferred and re-numbered as O.S.No.102 of 2019, on the file of District Munsif, Sholingur. The respondent herein claimed in the plaint that the suit property originally belonged to Kuppuswamy Naidu and he sold the suit property to respondent's father viz., Subramani by way of registered sale deed dated 21.09.1971. After death of the Subramani, his wife viz. Parvathy Ammal and his daughter, namely the plaintiff, have been in enjoyment of the suit property. It was also claimed that mother of the respondent Savithiri Ammal had executed a settlement



deed in respect of the suit property on 12.04.2000 in favour of respondent herein and put her in possession of the suit property. Thus, respondents claimed absolute right and possession over the suit property. It was alleged by the respondents that the petitioner herein without having any manner of right tried to commit trespass into the suit property and hence she was constrained to file a suit for bare injunction.

3. The said suit was resisted by the petitioners by filing the written statement. According to the petitioners the total extent of the suit property was 7 ½ cents in S.No.862/17. According to the petitioner, that Subramani, father of the respondent, sold away 3¾ cents as well as cart track to one Periya Desa Pillai by way of registered sale deed dated 11.05.1991 and from him, the petitioners 1 and 2 purchased 3 ¾ cents in the suit property through a registered sale deed dated 01.09.1983. It was also alleged that the first petitioner purchased an additional land for cart track from his vendor Periya Desa Pillai by way of registered sale deed dated 03.03.2000. Therefore, it is the contention of the petitioners that they have got title to a portion of the suit property by virtue of registered sale deed in their favour. The petitioners further averred that the plaintiff fraudulently



created a sham gift settlement deed dated 12.01.2000 of the entire property of 7 ½ cents, as if her mother was owner of the entire suit property. The claim of the respondent over the entire suit property was specifically denied by the petitioners.

4. A perusal of the typed set of papers filed by the petitioners would suggest that the trial in the suit had already commenced recording of evidence on the side of the respondent/plaintiff was over and the suit is posted for recording of evidence on the side of the petitioner/defendant. At that juncture, the petitioners had filed instant application for injunction restraining the respondent from trespassing into the suit property in any manner and putting up any construction in the suit property, so as to prevent their ingress and egress. In the affidavit filed in support of the said injunction petition, it was alleged by the petitioners that from March 2020 onwards, the respondent/plaintiff engaged henchmen and installed pillar in the suit property and raised wall by preventing ingress and egress of the petitioners. It was also averred that when the petitioners prevented the illegal act of the respondent they were abused and assaulted and that resulted in police complaint in Arakkonam Police Station.



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5. The respondent herein filed a counter denying the allegations made by the petitioners in the affidavit. It was alleged by the respondent in the counter that the allegations made by the petitioners in the affidavit were imaginary one. It was further averred that when the main case was posted for cross examination of DW's, the petitioner had come up with this injunction application just to drag on the proceedings.

6. Before the trial Court, the petitioners herein filed five documents as Exs.P1 to P5. P1 is the order passed by this Court in CrI.O.P.No.20605 of 2017. Ex.P2 is the complaint given to the Inspector of Police, Arakkonam, regarding alleged trespass of the respondent; Ex.P3 is the CSR issued to the petitioner by police; Ex.P4 is the undertaking letter given by the petitioner to the police stating that they moved the Civil Court for necessary relief; Ex.P5 is the photograph of the suit property which was marked by the objection of the respondent. The trial Court dismissed the injunction petition filed by the petitioner mainly on the ground that the suit is posted for recording of defendant's side evidence.

7. The trial Court also observed that the interim relief sought



for by the petitioner and the main relief sought for by the respondent are one and the same, namely, temporary injunction and hence, at this juncture, granting interim order would cause prejudice to the rights of parties in the main suit.

8. Aggrieved by the same, the petitioners had filed an appeal in CMA.No.1 of 2021 on the file of the Subordinate Court, Arakkonam. The first Appellate Court on consideration of the documentary evidence produced by the petitioners came to the conclusion that the petitioners approached the police authorities during June 2020 and gave a complaint that the respondents were trying to put up construction in the suit property. However, after giving undertaking to police that they would move the Civil Court for appropriate relief, they waited for nearly five months and moved the application for injunction only in the month of 1st November 2022. The first Appellate Court observed that the petitioners have not explained the delay of five months in approaching the Court for the relief of temporary injunction. The Appellate Court also pointed out that the application was filed when the main suit for posted for examination of evidence of witnesses. On the merits of the case also, the Appellate Court found that the petitioners



failed to establish any *prima facie* case in his favour for granting order of injunction and consequently, dismissed the appeal. Aggrieved by the same, the petitioners have preferred this revision.

9. This Court, by an order dated 06.04.2022 has directed the trial Court to appoint an Advocate Commissioner to ascertain the *status quo* of the suit property and file a report. Accordingly, the trial Court appointed an Advocate Commissioner and he also filed a report dated Nil along with his plan. The Advocate Commissioner in its report had stated that on 24.09.2022, visited the suit property in the presence of the counsel for the petitioners and respondent. According to the Advocate Commissioner though in the schedule to the plaint, it was mentioned that there was a hut in the suit property, when he visited the suit property, he did not find any hut in the suit property. However, he found a house with one room along with another cement sheeted house, bathroom and toilet. He also noted down three coconut trees and other vegetations in the backyard of the said two houses.

10. The petitioners have come up with a petition seeking interim



injunction restraining the respondents from committing trespass in the suit property and putting up construction. The respondent filed a counter disputing the right of the petitioners over the suit property and they also claimed that the application had been filed only to drag on the suit proceedings which is in the stage of recording of evidence on behalf of the petitioner/defendant. The suit is of the year 2019. From the records, it is seen that recording of the evidence on behalf respondent/plaintiff has already been over even in the year 2019 and it was posted for recording of evidence on the side of the petitioners/defendants. The main suit has been filed by the respondent for bare injunction claiming possession of the suit property. It is the case of the petitioners/defendants that they have got title to 3 ³/₄ cents in the suit property. From the documents filed by the petitioners in the present I.A.No.1 of 2000, this Court is unable to come to a definite conclusion, with regard to the possession of the properties. In order to get an order of injunction, the petitioners must show their lawful possession over the suit property and also the balance of convenience in their favour. As rightly pointed out by the first Appellate Court, the petitioners neither produced any documents to prove their lawful possession over the suit property nor proved



balance of convenience in their favour. Earlier when this matter came up for hearing before my predecessor, this Court *suo motu* appointed an Advocate Commissioner and he visited the property on 24.09.2022 and filed a report with plan, wherein he noted down the physical features of the suit property. In view of the fact that the trial in the suit had already commenced and the same is stalled by filing of civil revision petition, this Court feels that it would be appropriate to direct both the parties to maintain *status quo* till the disposal of the main suit. Therefore, both the parties are directed to maintain *status quo* in the suit property as noted by the Advocate Commissioner in his report and plan filed before this Court.

11. In view of the fact, the suit is of the year 2019 and the trial had commenced already and the respondent's side evidence is already over, this Court is inclined to issue a direction to the Court below to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

12. The learned counsel for the respondent pointed out the unhappy allegations made by the revision petitioners against the Presiding



Officer of the Courts below in the pleadings and also in the grounds of revision filed before this Court.

13. The revision petitioner in the grounds of revision used certain objectionable language as against the Presiding Officers of the Courts below.

14. This Court is not very happy with the language employed by the revision petitioners as against the Presiding Officer of the Courts below. This Court underlines that the first and foremost duty of a counsel is to act in a dignified manner towards the Court. It includes his duty to use sober and dignified language in pleadings.

15. This Court refrains from taking any action against the petitioners and also their counsel on a positive hope that they would adhere to the golden rules of pleadings and would not repeat these objectionable language in the pleadings in future.



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16. The Civil Revision Petition is disposed of with the directions as indicated above. Consequently, connected miscellaneous petitions are closed.

12.01.2023

NCC: Yes

Index: Yes/ No

Speaking Order / Non-Speaking Order

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To

The Subordinate Judge,

Arakonam.



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S.SOUNTHAR. J.

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Pre-delivery Order made in

C.R.P.No.1041 of 2022

12.01.2023