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C.R.P.(PD) No.1165 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.1165 of 2021
and C.M.P.No.8932 of 2021

1.Govindammal
2.Saravanan
...Petitioners

vs.

1.Parvathi Ammal
2.Elumalai
3.Lakshmi
4.Alamaelu
5.Ajith

6.Minor Akash
Minor 6th respondent rep. by Mother
& Guardian Alamaelu, 4th respondent
...Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal Orders dated 03.02.2021 passed in I.A.No.108 of 2020 in O.S.No.14 of 2016 on the file of the Addl. District Munsif Court, Cheyyar, Tiruvannamalai District.

For Petitioners : Mr.P.Mani



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ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal Order dated 03.02.2021 passed in I.A.No.108 of 2020 in O.S.No.14 of 2016 on the file of the Addl. District Munsif Court, Cheyyar, Tiruvannamalai District.

2.The brief facts of the case is that originally the suit was filed before the Principal District Munsif Court, Cheyyar in the year 2016. The suit has been filed for a prayer to declare that the suit property belongs to the plaintiff and for a permanent injunction restraining the defendants and their men not to interfere with the peaceful possession and enjoyment of the suit property. Thereafter an interlocutory application was filed in the year 2020 under Order 8 Rule 6(A) under Section 151 of C.P.C. It is also the case that the deceased Jayaraman agreed to pay Rs.46,375/- to the petitioner on 07.12.2000 and had received a sum of Rs.25,000/- as advance payment and a Deed of Sale in the name of the petitioner. He has also stated that he received the remaining amount of Rs.21,375/- and handed it over to the petitioner. By order dated 03.02.2021, the trial Court had dismissed the application filed by the petitioners. Aggrieved by the same, the present petition has been filed.

3.Learned counsel for the petitioners submitted that the Court



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below ought not to have dismissed the application seeking permission to file counter claim as if the relief sought for in the counter claim is barred by limitation, when limitation is a mixed question of law and facts which have to be decided after full fledged trial. He further submitted that the fair and decretal orders passed by the Court below are illegal, irregular and amounts to failure to exercise the powers vested in it.

4.Learned counsel for the respondent has filed a counter in I.A.No.108 of 2020 wherein it has been denied all the allegations made by the petitioners are false and baseless.

5.Heard learned counsel for the petitioner and perused the material available on record.

6.On perusal of the records, it is seen that the suit has been filed for a prayer to declare that the suit property belongs to the plaintiff and for a permanent injunction restraining the defendants and their men not to interfere with the peaceful possession and enjoyment of the suit property.

It is also seen that the trial Court had dismissed the application on



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03.02.2021 on the ground that the case was filed on 27.01.2016. But the petitioner filed a petition on 11.03.2019 seeking permission to file a counter claim. The plaintiff's side witness has been concluded and the case has been posted for further witness on the side of plaintiff, at this juncture, it would not be appropriate to allow the application.

7.Considering the facts and circumstances of the case and the submission made by the learned counsel appearing for the petitioner and as there is no merit in this Civil Revision Petition, this Court is not inclined to interfere with the order passed by the trial Court dated 03.02.2021 and accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

03.03.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
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The Addl. District Munsif Court, Cheyyar, Tiruvannamalai District.



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V.BHAVANI SUBBAROYAN, J.

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