



CRP. Nos.1503 and 1504 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 22.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition Nos.1503 and 1504 of 2022
and
C.M.P. No. 7654 and 7663 of 2022

C.R.P.No.1503 of 2022

E. Murugesan

... Petitioner

Versus

- 1.Thangarasu @ Thangaraj
2. Chinnathayee
3. Marimuthu
4. Iruasa Gounder
5. Palanisamy
6. Marimuthu
7. Iruasa Gounder
8. Murugesan
9. Subramani
10. Palaniyyan
11. Iruasa Gounder
12. Chinnathambi
13. Ammasi
14. Prakash
15. Priya
16. Bakkiam
17. Ravi
18. Dhanalakshmi
19. Rajamani
- 20.Irusayee
21. Pavayee
22. Prakash



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23. Kannammal
24. Ayyammal
25. Pavayee
26. Iruyayee
27. Iruyayee
28. Iruyayee
29. Kailashpathi
30. Mariammal
31. Iruyayee
32. Alamelu @ Santhi
33. Janaki
34. Chinnathayee
35. Gokulraj
36. Sundhari

...Respondents

C.R.P.No.1504 of 2022

E. Murugesan

... Petitioner

Versus

- 1.Thangarasu @ Thangaraj
2. Chinnathayee
3. Marimuthu
4. Irua Gounder
5. Palanisamy
6. Marimuthu
7. Irua Gounder
8. Murugesan
9. Subramani
10. Palaniyyan
11. Irua Gounder
12. Chinnathambi
13. Ammasi
14. Palanisamy
15. Ravi
16. Dhanalakshmi
17. Rajamani
18. Iruyayee
19. Pavayee



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20. Rajathi
21. Kannammal
22. Ayyammal
23. Pavayee
24. Irusayee
25. Irusayee
26. Irusayee
27. Kailashpathi
28. Mariammal
29. Irusayee
30. Alamelu
31. Janaki
32. Chinnathayee
33. Gokulraj
34. Sundhari

....Respondents

C.R.P No.1503 of 2022: Civil Revision Petition filed Under Article 227 of Constitution of India, praying to strike off the plaint O.S.No. 05 of 2022 pending on the file of District Munsif, Sankari.

Prayer in C.R.P No.1504 of 2022: Civil Revision Petition filed Under Article 227 of Constitution of India, praying to strike off the plaint O.S.No. 11 of 2021 pending on the file of Subordinate Court, Sankari.

For Petitioner : Mr. R. Marudhachalamurthy
in both CRPs

For Respondents : Mr. D. Shivakumaran for R1
in both CRPs

ORDER

The petitioner has filed these Civil revision petitions, invoking Article 227 of The Constitution of India, to strike off the plaints in O.S. No. 05 of 2022 and O.S.No. 11 of 2021 respectively on the file of Subordinate Court,

Sankari.

<https://www.mhc.tn.gov.in/judis>



2. The revision petitioner is the fourth defendant in the aforesaid suits in O.S. No. 5 of 2022 and O.S. No. 11 of 2021 respectively on the file of Subordinate Court, Sankari. The first respondent in these Civil Revision Petitions is the plaintiff in both the suits. The suits have been filed for the relief of declaration to declare that the plaintiff/first respondent is the absolute owner of the properties described in the plaints and for a consequential injunction. In effect, the suit in O.S. No. 5 of 2022 was filed for the following relief:-

"a) Declare the preliminary decree and judgment passed in O.S.No.949/1961 on the file of the District Munsif Court, Salem, dated 18.12.1962 as null and void abinitio and not binding on the plaintiff and the suit property.

b) Declare the final decree and judgment passed in I.A.No.1542/20114 in O.S.No.949/1961 dated 08.03.2021 on the file of the III Additional District Munsif Court, Salem as null and void abinitio and not binding on the plaintiff and the suit property

c) restrain the defendants and their men by an order of permanent injunction not to disturb the peaceful possession and enjoyment of the suit property by the plaintiff and his men

d) award cost of the suit and other consequential reliefs.



3. On notice in the suits, the fourth defendant has come forward with these Civil Revision Petitions by contending that the suits filed by the first respondent is an abuse of process of law and prayed for striking of the plaints.

4. The learned counsel for the revision petitioner/fourth defendant submitted that while filing the first suit in O.S. No. 11 of 2021, the plaintiff/first respondent has not obtained permission as required under Order II Rule 2 of CPC and therefore the suit is clearly hit by the mandatory provisions of law. Further, the plaintiff/first respondent has knowledge about the passing of the final decree in the year 2011 and after two years thereafter, he purchased the suit properties to prevent the decree from being executed. Already, the vendors vendor of the plaintiff was one of the defendants in O.S. No. 949 of 1961 and therefore, the sale in favour of the plaintiff/first respondent herein can be ranked as the one executed during the pendency of litigation between the parties. In any event, now, the defendants have filed Execution Petition in the suit in O.S. No. 949 of 1961 to execute the final decree and it is for the plaintiff/first respondent to implead himself in the execution proceedings and contest it. While so, institution of fresh suits in O.S. No. 05 of 2022 and O.S.No. 11 of 2021 respectively is not warranted as it would only prolong the litigation further. Already, the suit in O.S. No. 949 of 1961 is pending and it is



yet to reach a finality. While so, the present suits filed by the plaintiff/ first respondent would deprive the parties in the earlier suit in O.S. No. 949 of 1961 from enjoying the fruits of the decree. The learned counsel for the revision petitioner/fourth defendant therefore prayed for allowing these Civil Revision Petitions and to strike off the complaints in O.S. No. 05 of 2022 and O.S.No. 11 of 2021 as prayed for.

5. Per contra, the learned counsel for the first respondent/Plaintiff has submitted that the first respondent/plaintiff is the absolute owner of the properties covered in the complaints having purchased the same through a registered sale deed dated 25.03.2013 registered as document No. 1906 of 2013 on the file of Sub-Registrar, Magudanchavadi and from the date of such purchase, he is in possession and enjoyment of the property. While so, the defendants in the suit attempted to dispossess the plaintiff/first respondent herein on 04.01.2021. On enquiry, the plaintiff/first respondent came to know that the defendants are the legal heirs of plaintiffs as well as defendants in a suit in O.S. No. 949 of 1961 on the file of District Munsif Court, Salem which was filed for partition and separate possession. The plaintiff/first respondent also came to know that the said suit was decreed on 18.12.1962 by recording joint endorsements made by the plaintiffs as well as defendants 2 and 3 in the



suit and the first defendant in the suit remained exparte. The plaintiff/first respondent also came to know that a final decree was passed in I.A. No. 1542 of 2011 after 49 years of the passing of the preliminary decree. On coming to know about the aforesaid facts, the plaintiff/first respondent immediately filed the suit. In any event, the plaintiff/first respondent is a bona fide purchaser of the suit properties and his right has to be protected. The defendants have not been in possession of the suit properties at any point of time and therefore, the suit for declaration filed by him is proper. The defendants have to contest the suits and therefore the Civil Revision Petitions filed under Article 227 of The Constitution of India is not maintainable. Even assuming that the suits are abuse of process of law, it is for the defendants to file appropriate applications under Order VII Rule 11 to reject the plaints and to let in evidence. While so, it is not open for the revision petitioner/fourth defendant to file the present Civil Revision Petitions invoking under Article 226 and 227 of Constitution of India. Accordingly, the learned counsel for the plaintiff/first respondent prayed for dismissal of the Civil Revision Petitions.

6. On considering the submissions on both sides and on perusal of the records, it reveals that, the revision petitioner has purchased the suit properties during the year 2013. One Mr. Irusa Gounder, who is the vendor's



vendor of the plaintiff/first respondent was one of the defendants in O.S. No. 949 of 1961. In the suit, a preliminary decree was passed and subsequently final decree was also passed. To execute the decree, execution proceedings have been initiated in O.S. No. 949 of 1961. At this stage, the plaintiff/first respondent herein has filed the two suits for declaring the preliminary decree passed in the suit as well as the final decree as null and void. It is also to be mentioned that the plaintiff/first respondent, instead of taking appropriate legal proceedings against his vendor or vendor's vendor has filed the present suits. Taking note of the above facts, this court is of the view that the institution of fresh suits are not warranted as he purchased the property during pending of suit and also hit by principle of lis pendency. If at all the plaintiff/first respondent is having any valid defence to prove his case, he has to work out the remedy in the execution proceedings in the place of his vendor / defendant in suit O.S.No.949 of 1961, pending before the trial Court. Instead of taking such step, filing fresh suits is a clear case of abuse of process of law. It is also seen that from the year 1961, the suit in O.S. No. 949 of 1961 is pending on the file of District Munsif, Salem along with final decree proceedings in I.A.No. 1542 of 2011 in O.S. No. 949 of 1961. In such circumstances, liberty is given to the plaintiff/first respondent herein to work out his remedy against his vendor or vendor's vendor in a manner known to law.



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7. Accordingly, these Civil Revision Petitions are disposed of.

Consequently, connected miscellaneous petitions are closed. No costs. The Plaints in O.S. No. 05 of 2022 and O.S.No. 11 of 2021 respectively on the file of Subordinate Court, Sankari are hereby ordered to be struck off.

22.12.2023

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation:Yes/No

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To

1. The District Munsif Court, Sankari.
2. The Subordinate Judge, Sankari.
3. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J

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