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CRP.No. 1392 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

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and

CMP.No. 8104 of 2020

1.B. Sundarajan
2.B. Srinivasan
3. B. Padmanabhan

.. Petitioners

Versus

1.N.Suresh
2.G.Ramesh
3.M.Amudha
4.V.Sumalatha
5.B.Arputham
6.Usha Nandhini

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays to set aside the order and decretal order dated 24.10.2019 made in CMA.No. 5 of 2017 by the Subordinate Judge, Madurantakam, Kancheepuram District, by setting aside the order and decretal order dated 21.11.2016 passed in I.A.No. 1127 of 2016 in O.S.No. 118 of 2016 by the District Munsif Court, Madurantakam, Kancheepuram District.



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For Petitioners : Mr. N. Nagu Sah
For Respondents : Mr.S.Senthilnathan

ORDER

This Civil Revision Petition has been filed to set aside the order and decretal order dated 24.10.2019 made in CMA.No.5 of 2017 by the Subordinate Judge, Madurantakam, Kancheepuram District by setting aside the order and decretal order dated 21.11.2016 passed in I.A.No. 1127 of 2016 in O.S.No. 118 of 2016 by the District Munsif Court, Madurantakam, Kancheepuram District.

2. The revision petitioners herein are the plaintiffs and the respondents herein are the defendants 1 to 6 in the original suit.

3. On a perusal of the records, it is seen that the petitioners/plaintiffs filed the suit in O.S.No. 118 of 2016 before the learned District Munsif, Madurantakam for declaration. The defendants contested the suit by filing written statement and denied all the averments made in the plaint. During the pendency of the suit, the revision petitioners filed I.A.No.1127 of 2016 in



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O.S.No.118 of 2016 under Order XXXIX Rules 1 and 2 of CPC., seeking to grant an order of temporary injunction restraining the respondents/defendants 1 to 6 from in any way interfering with the plaintiffs' peaceful possession and enjoyment of the suit property till the disposal of the suit. After perusing the records, the trial Court allowed the said application with costs, by order dated 21.11.2016. Aggrieved by the said order, the respondents herein have preferred an appeal before the Subordinate Judge, Madurantakam and the same was allowed by judgment dated 24.10.2019. Challenging the said order, the petitioners have filed this Revision before this Court.

4. On a perusal of the impugned order, it reveals that the appeal has been preferred as against the decretal order passed in I.A.No. 1127 of 2016 in O.S.No. 118 of 2016 dated 21.11.2016. The original suit was filed by the petitioners/plaintiffs seeking for the relief of declaration and permanent injunction along with ad-interim injunction. The relief claimed in interim application is restraining the respondents 1 to 6 from in any way interfering with the plaintiffs' peaceful possession and enjoyment of the suit property till the disposal of the suit. The defendants 7 to 9 were not added as a parties, since no relief is claimed against them. It is the case of the



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petitioners/plaintiffs in the trial Court that the said property is the absolute and exclusive possession of the grand parents of the plaintiffs, namely, Kakkammal and Rengasamy Reddiyar. The plaintiff is having Patta and Kist receipts, which stands in the name of Kakkammal as Ex.P1 to Ex.P6 and Ex.P15 to Ex.P18 and they died leaving their only daughter and sons. The plaintiffs have marked the Legal Heir Certificate of Rengasamy and Kakkammal as Ex.P3. There was some dispute between the plaintiffs and the defendants 7 to 9 and hence Patta has not been changed in their name. They are now trying to settle their partition suit before the Court. Then only, they have verified the Chitta and came to light that the defendants have created various encumbrances over the suit property and as such, 8 sale deeds between the defendants 1 to 6 have been created and the same have been marked as Ex.P7 to Ex.P14. The respondents/defendants are taking advantage of these documents in their name, and they are attempting to interfere with the peaceful possession and enjoyment of the suit property and therefore, the findings of the trial Court are to be set aside.

5. Per contra, the allegation in the petition is that the suit property



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belongs to Smt.Kakkammal, and the petitioners are the legal heirs of Smt.Kakkammal and obtained possession of Smt.Kakkammal after her demise as legal heirs, viz., the petitioners and the defendants 7 to 9 who have enjoyed the property, are all specifically denied by the respondents. The other allegation set out in the plaint in paras 3 to 5 and the alleged cause of action for the present plaint are hereby denied by the defendants. The respondents submit that the suit S.No.46/6A, Old S.No.46/6 was never enjoyed by Smt. Kakkammal, and not her legal heirs. The suit property which belongs to Smt.Kakkammal and their family, was disputed between her legal heirs viz., the plaintiffs and the defendants 7 to 9 and there was a partition suit between them, and it seems that the suit property was not included in the partition suit. Therefore, the plaintiffs 7 to 9 have no right over the suit property. The respondents submit that an extent of 0.22 acres comprised in Old S.No. 46/6 was purchased by one Mr.Kuppusamy from his vendors Mr.Masilamani Naicker, Smt.Rukkumani Ammal and their children by way of registered sale deed dated 13.08.1986 in Doc.No. 1053 of 1986 for valid consideration. Further, an extent of 0.22 acres in Old S.No. 46/6 was purchased by one Mr.Kuppusamy from his vendors Mr.Nataraj Naicker, Smt.Jayalakshmi Ammal, Mr.Ravi Kumar and Mr.Sridhar by way of



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registered sale deed dated 15.12.1986, vide Doc.No. 1998/1986 for valid consideration. By virtue of the above two sale deeds dated 13.08.1986 and 15.12.1986, the above said Mr.Kuppusamy has become rightful owner for the above 0.44 acres and he was in possession and enjoyment till his death. After the death of Kuppusamy, his widow Smt.Palaniyammal, his sons K.Ganesan, K.Ranganathan, K.Ravi and K.Ramakrishna have enjoyed the above properties as legal heirs of the deceased Kuppusamy. After the demise of Mr.Kuppusamy, the Government has recognized the title and possession of Smt.Kanniammal and granted Patta for the properties measuring an extent of 0.51 acres in the year 2009 itself. The said Kanniammal, K. Ganesan, K. Ranganathan and K.Ravi have jointly settled the above properties in favour of Mr.Ramakrishnan by way of registered settlement deed dated 11.06.2012 in Doc.No. 2892 of 2012. The settlement deed has been duly executed, attested, registered, acted upon and has come into force. The Government has also recognized the title and possession of Mr.Ramakrishnan and granted Patta to him.

6. On a further perusal of the records, it reveals that the petitioner filed



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Patta as Ex.P1, in which S.No. 46/6A measuring an extent of 20.5 hectare is stated and the Patta also stands in the name of the said Kakkammal. The plaintiff has also filed the Death Certificate of Kakkammal and the same is marked as Ex.P2. The Legalheirship Certificate issued by the Tahsildar pertaining to Rangasamy Reddiar, the husband of Kakkammal is marked as Ex.P3. In Ex.P3, the petitioners' names are shown as the legal heirs of the deceased Rangasamy Reddiar. Ex.P4 Patta stands in the name of Kakkammal in which the petition mentioned survey number is included.

7. On a perusal of the impugned order dated 21.11.2016, it reveals that the petition mentioned survey number is under the name of Kakkammal. The petitioner prayed that the respondents 1 to 6 who are the third parties to the suit property may be restrained from interfering with the possession of the schedule mentioned property. The respondent filed Ex.R1, sale deed executed by one Masilamani Naicker in favour of Kuppusamy Naicker. It is also seen that the said Masilamani inherited the property from his ancestors and to prove that the property of the said Masilamani is the ancestral property, the respondent had not filed any document that the said Masilamani held the property in the capacity as ancestral property. The respondent



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marked Ex.R5 Adangal, in which S.No. 46/6 is shown as coming under the name of the cultivator Ananthaiye Ammal and in the same Ex.R5 in S.No. 46/6A, the same is under the cultivator Ramakrishnan. The petitioners' counsel stated that the same was obtained behind the back of the petitioners, since the suit property originally belonged to one Kakkammal. The vendor Masilamani's title could be decided at the fag end of the trial and as of now, the same has been established by the respondent herein. In view of the above, the trial Court has come to the conclusion that, already temporary injunction was granted in favour of the petitioners, as the petitioners made out the *prima facie case* and the balance of convenience is also in their favour. Further more, irreparable loss and hardship would be caused to the petitioners herein if the temporary injunction is not granted.

8. Taking into consideration the above facts and circumstances of the case, and as such, the suit is of the year 2016, both the parties are hereby directed to co-operate for trial and to complete the entire process within a period of one year from the date of receipt of a copy of this order.



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9. Accordingly, the Civil Revision Petition is disposed of. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No

Speaking order : Yes/No

Neutral citation : Yes/No

msm

To

1. The Subordinate Judge, Madurantakam, Kancheepuram District.
2. The District Munsif Court, Madurantakam, Kancheepuram District.
3. The Section Officer, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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