



C.R.P(PD)No.1206 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P(PD)No.1206 of 2021
and C.M.P.No.9322 of 2021

Shajahan
Muthavalli
Masjide Salman Farsi,
Melnallathur, Tiruvallur.

...Petitioner

vs.

Sarojammal

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Decretal Order passed in I.A.No.181 of 2016 in O.S.No.49 of 2015 on 06.10.2018 on the file of the Subordinate Judge, Tiruvallur.

For Petitioner : Mr.A.Palaniappan

For Respondent : Mr.K.Balaji

ORDER

The Civil Revision Petition has been filed to set aside the Fair and Decretal Order passed in I.A.No.181 of 2016 in O.S.No.49 of 2015 on 06.10.2018 on the file of the Subordinate Judge, Tiruvallur.



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2.The case of the petitioner is that originally a suit in O.S.No.49 of 2015 was filed by the plaintiff therein under Order VII Rule 1 of CPC against the petitioner along with 12 others therein. The plaintiff submits that the plaintiff is the absolute owner of the schedule items 1 to 3. The plaintiff purchased the suit property on 10.09.1990 for valuable consideration from its erstwhile owner vide Document No.2567 of 1990. The patta for the property issued in the name of the plaintiff in Patta No.1969. From the date of purchase, the plaintiff is in constructive possession and enjoyment of the property. Except the plaintiff none else has any right or title over the same.

(i)The plaintiff submits that in the month of November 2013, the plaintiff visited the suit property. To the shock and surprise of the plaintiff, she found that the eleventh defendant alleging that he is the Muthavalli of Majide Salmon Parsi had made some unauthorized temporary shed at the Plot No.2 and half portion of Plot No.3. When the plaintiff questioned, the eleventh defendant about his unauthorized occupation, he stated that he had purchased the property. Immediately, the plaintiff rushed to the Sub-Registrar Office, Manavala Nagar and



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applied for Encumbrance Certificate on 22.11.2013. Only on 22.11.2013, the plaintiff came to know about the fraudulent creation of documents by the first defendant.

(ii)The petitioner filed I.A.No.181 of 2016 in O.S.No.49 of 2015 under Order 26 Rule 9 CPC. The petitioner is the eleventh defendant in the above suit. By order dated 06.10.2015, the learned Subordinate Judge, Tiruvallur had dismissed the said I.A.No.181 of 2016. Aggrieved by the same, the petitioner has filed this Civil Revision Petition.

3.Learned counsel for the petitioner submitted that the trial Court had without application of mind had bluntly rejected the petitioner's application for appointment of an Advocate Commissioner to note down the physical features of the property. He submitted that the trial Court had failed to consider the categorical dispute between the parties that the respondent has disputed very existence of the mosque and madrasa in the suit properties run by the petitioner for which it is inevitable to make a local investigation for the purpose of elucidating the existence of the superstructure in the suit properties. He further submitted that the trial



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Court failed to consider the fact that the respondent had suppressed the material fact that there was mosque and madrasa being run by the petitioner in the suit property from the year 2005 by false and untenable case that the petitioner had only constructed a temporary shed. Hence, he prayed this Court to allow the above petition.

4.Learned counsel for the respondent has filed a counter in I.A.No.181 of 2016 wherein it has been stated that there is a mosque and madrasa school run by local Melnallathur Muslim Community people for worshipping and for education purposes in suit item 2 and 3 as false and baseless allegation. He submitted that no Advocate Commissioner can be appointed to note down the possession aspect of the petitioner according to the well laid dictums. He further submitted that the petition is false, frivolous, vexatious and not maintainable either in law or on facts. Therefore, he prayed this Court to dismiss the petition.

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



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6.On going through the typed set of papers, it is seen that the plaintiff purchased a suit property on 10.09.1990 for valuable consideration from its erstwhile owner vide Document No.2567 of 1990. The patta for the property issued in the name of the plaintiff in Patta No.1969. According to the plaintiff, from the date of purchase, the plaintiff is in constructive possession and enjoyment of the property. Except the plaintiff none else has any right or title over the same.

7.On perusal of records, it is seen that by order dated 06.10.2015, the learned Subordinate Judge, Tiruvallur had dismissed the said I.A.No.181 of 2016. The learned Subordinate Judge held that the plaint averments based on the fraudulent execution of deed by impersonation and also prayer to recover the possession. Hence this fact in issue can be decided on the basis of documentary evidence produced by both parties. This Court has not been satisfied with the application filed by the petitioner seeking for appointment of Advocate Commissioner to note down the physical features of the property. Accordingly, the petition was dismissed.



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8.Considering the facts and circumstances of the case and the submissions made by the learned counsel appearing on either side, this Court is not inclined to interfere with the order passed by the Court below and accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order
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To

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V.BHAVANI SUBBAROYAN, J.

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