



C.R.P.(PD) No.1626 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.1626 of 2021
and C.M.P.No.12595 of 2021

1.Pradaban
2.Pradeeban
3.Navaneetham
4.Latha
5.Minor Thamizharuvi
6.Minor Thamizhinban
(Minor petitioners 5 and 6 are rep.
by next friend and mother Latha)

...Petitioners

VS.

Konjumkilimariamman temple,
Mettupalayam,
Uzhavarkarai Commune,
Puducherry – 605 009
Rep. by the trustee,
R.Suburamanian,
Shanmughapuram,
Mettupalayam, Ponducherry.

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, challenging the Order and Decretal Order in C.M.A.No.02/2017 on the file of Principal Sub Judge, Thindivanam dated 17.04.2021 in confirming the order and decretal order I.A.No.330/2015 in



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O.S.No.66/2015, on the file of District Munsif Cum Chief Judicial Magistrate, Vanur.

For Petitioners : Mr.V.Raghavachari
Senior Counsel

For Respondent : Served – name printed
through LCC, Mr.P.Pugazhandhi - N.A.

ORDER

This Civil Revision Petition has been filed to set aside the Order and Decretal Order in C.M.A.No.02 of 2017 on the file of the Principal Sub Judge, Thindivanam dated 17.04.2021 in confirming the order and decretal order I.A.No.330 of 2015 in O.S.No.66 of 2015, on the file of the District Munsif Cum Chief Judicial Magistrate, Vanur.

2.The brief fact of the case is that the Originally the suit was filed under Order VII Rule 1 C.P.C to declare plaintiff's title to the suit property and to grant a decree of permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property. The petitioners had filed the above suit before the District Munsif Court at Vanur. Thereafter, I.A.No.330 of 2015 in O.S.No.66 of 2015 was also filed by the petitioners under Section Order 39, Rules 1 & 2 C.P.C. The petitioners in the interlocutory application are the plaintiffs



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in the main suit and that the suit property originally belonged to one Srinivasan, who was in possession and enjoyment thereof. The said Srinivasan conveyed the title to the suit property in favour of one Loganayaki under a Sale Deed dated 04.09.1931. The said Loganayaki Ammal died intestate leaving behind her son viz., Radhakrishnan as her to succeed to the suit property. The said Radhakrishnan sold and conveyed the suit property in favour of one Sundarambal by way of Sale Deed dated 28.12.1950. The said Sundarambal died leaving behind daughters viz., Savithri, Navaneetham, Suseela and Vijayavalli as her legal heirs. The said legal heirs sold the suit property in favour of the father of the petitioners 1 and 2 viz., Periasami under a Sale Deed dated 21.02.2012. The said Periasami gifted the suit property in favour of the petitioners 1 and 2 and their brother viz., Prabhakaran under a Gift Deed dated 13.03.2013. Prabhakaran died leaving behind the petitioners 3 to 5 as his legal heir. The suit property thus became the exclusive property of the petitioners who are in possession thereof.

3.Learned Senior Counsel for the petitioners would submit that the trial Court ought to have seen that Mr.Radhakrishnan sold the property to Mr.Periasami under Ex.P3 on 21.02.2012 and delivered the possession to



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him. He would submit that the respondent has claimed right through Jayammal and failed to prove that she was in possession of the property any time earlier. He would further submit that the trial Court ought to have seen that the Sale Deed Ex.P2 dated 28.12.1950 cannot be used against the plaintiff as Radhakrishnan is not the party to the said document.

4.Learned Senior Counsel for the petitioners would submit the trial Court ought to have seen that Periasami has settled the property in favour of the petitioners 1 and 2 and Prabhakaran and ever since that date they are in possession of the property. He would submit that the trial Court ought to have seen under Ex.P4, Periasami had executed a Settlement Deed in favour of the petitioners 1 and 2 and Prabhakaran and patta in respect to the suit property and the petitioners have proved their exclusive possession by production of Exs.P5 to P8. He would further submit that the trial Court ought to have seen the existence of Jayammal cannot be presumed based only on Ex.D2 and it is the duty of the Court not to demand anything new than mere possession and prima facie title at the time of assessing an application for injunction, the lack of it clearly proves that the Courts below have failed to objectively dealt with the



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subject and this has resulted in miscarriage of justice. Hence, he prayed
this Court to allow the Civil Revision petition.

5.A Counter has been filed in I.A.No.330 of 2015 in O.S.No.66 of 2015, wherein it has been stated that the respondent denied all the allegations raised by the petitioners. An extent of 1 acre and 66 cents in S.No.224/10 (Old S.No.426/9B) in Poothurai Village belongs to the respondent temple under a Registered Sale Deed. The petitioners do not have any valid right in or title to the suit property. The Gift Deed dated 13.03.2013 is a sham document created to buttress a false claim of title to the suit property. The petitioners do not have any prima facie case in their favour. The petitioners are not entitled to interim injunction and that the petition is therefore liable to be dismissed.

6.Heard learned Senior Counsel for the petitioners and perused the material available on record.

7.On going through the plaint document, it is seen that the cause of action for the suit arose on 28.12.1950 when Radhakrishnan sold the property to Sundarambal on 21.02.2012 when Savithiri and other sold the



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property to Periasami on 13.03.2013 when Periasami settled the suit property in favour of her sons on 08.05.2015 when Prabakaran died and in the third week of July 2015 when the defendant attempted to interfere with the plaintiffs possession and enjoyment of the suit property and on subsequent days at Poothurai Village where the suit property is situate within the jurisdiction of this Court.

8.On going through the typed set of papers, it is seen that by order dated 28.03.2017, the trial Court had dismissed the application filed by the petitioners on the ground that it cannot be said that the petitioners have a prima facie case in their favour and therefore the trial Court held that the petitioners who have miserably failed to establish the existence of prima facie case in their favour and they are not entitled to the relief of interim injunction.

9.Considering the facts and circumstances of the case and the submissions made by the learned Senior Counsel appearing for the petitioners, this Court is of the view that no errors have been committed by the Courts below. Since the respondent is not available, this Court is of the view that the status quo to be maintained till the disposal of the



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suit. As the suit is of the year 2015, the trial Court is directed to dispose of the suit as expeditiously as possible preferably within a period of one year.

10. With the aforesaid directions, the Civil Revision Petition is disposed of. 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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To

1. The Principal Sub Judge, Thindivanam.
2. The District Munsif Cum Chief Judicial Magistrate, Vanur.



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V.BHAVANI SUBBAROYAN, J.

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