

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**C.R.P(MD).No.692 of 2023
and
CMP(MD)No.3203 of 2023**

S.Thangammal

... Petitioner/Petitioner/Plaintiff

Vs.

1.P.Subramanian

2.Thiruppathi

... Respondents/Respondents/
Defendants

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for records pertaining to the order dated 19.09.2022 made in I.A.No.3 of 2022 in O.S.No.291 of 2021 on the file of the II Additional District Munsif Court, Tirunelveli and set aside the same.

For petitioner : Mr.D.Senthil for B.Char Murugan

ORDER

This petition has been filed to quash the proceedings in I.A.No.3 of 2022 in O.S.No.291 of 2021 on the file of the II Additional District Munsif Court, Tirunelveli, dated 19.09.2022.

2.The trial in the suit filed by the petitioner in O.S.No.291 of 2021 has already commenced. The suit has been filed by the petitioner for a permanent injunction to restrain the respondents from interfering with her peaceful possession of the property. The petitioner/plaintiff claims possession of the property on the strength of a Gift Deed dated 20.06.1973. It is further submitted that the property in question was inherited by the petitioner's husband earlier on 04.06.1973 pursuant to the Family partition vide registered D.No.1276/1973.

3.The specific case of the petitioner is that after the suit was filed on 16.04.2021 in O.S.No.291 of 2021 before the II Additional District Munsif Judge, Tirunelveli, the defendants also entered appearance and filed written statement on 22.10.2021. Based on the written statement of the defendants, the Court has framed the following issues:-

1.Whether the plaintiff's husband has sold the suit schedule property to defendants father?

2.Whether the suit is hit by *Res Judicata*?

3.Whether the plaintiff has willfully suppressed vital information regarding previous round of litigations with respect suit schedule property?

4.Whether the suit is bad for seeking a relief of injunction simpliciter instead of declaration?

5.Who is in possession of the suit schedule property?

6.Whether the plaintiff is entitled to the relief as prayed for in the plaint?

7.To what other relief the plaintiff entitled to?

4.It is submitted that the Court ought to have also framed additional issues as to whether the plaintiff is entitled to permanent injunction on the strength of possession over the property and the Gift Deed dated 20.06.1973 executed by the petitioner's husband Late.Sudalaiyandi Devar.

5.That apart, it is submitted that the respondent's father Late.Pitchandi Devar, had filed O.S.No.327 of 1980 on the strength of sale agreement signed by the petitioner's husband Late.Sudalaiyandi Devar on 17.12.1974. The said suit was decreed on 31.10.1983 without the knowledge of the petitioner. It is submitted that the petitioner should have been made a party to the said proceedings.

6.The pendency of the present Civil Revision Petition before this Court, will delay in proceedings before the Trial Court. The petitioner has not clearly stated what additional issue the petitioner seeks the Court to consider.

7.Considering the fact that the petitioner is claiming title/possession over the property on the strength of the alleged Gift Deed dated 20.06.1973, this Civil Revision Petition is disposed at the time of admission by directing the Trial Court to consider the following additional issues:-

1.Whether the plaintiff's husband Late.N.Sudalaiyandi Devar had gifted the subject land to the petitioner on 20.06.1973?

2.Whether the aforesaid Gift Deed is a Registered Gift Deed executed in favour of the Plaintiff?

3.Whether the plaintiff is entitled to any right on the strength of the aforesaid Gift Deed?

8.The the II Additional District Munsif Court, Tirunelveli, shall endeavour to dispose the suit in O.S.No.291 of 2021 as early as possible preferably within a period of 12 months from the date of receipt of a copy of this order.

9.With the above direction, this Civil Revision Petition is disposed of.

No costs. Consequently, the connected miscellaneous petition is closed.

15.03.2023

NCC : Yes/No
Index : Yes/No
Internet:Yes/No
dss

To

- 1.The II Additional District Munsif Court,
Tirunelveli.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P(MD).No.692 of 2023

C.SARAVANAN,J.

dss

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