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C.R.P.(MD)No.2623 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.2623 of 2022
and
C.M.P.(MD)No.12788 of 2022

Shanthi Natarajan

.. Petitioner

Versus

1.R.Vijayaraghavan
2.V.R.Angayarkanni

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, against the order dated 28.09.2022, passed in C.M.A.No.10 of 2022, by the learned Principal District Judge, Tirunelveli, confirming the judgment and decree in I.A.No.1 of 2020 in O.S.No.196 of 2020, dated 08.12.2021, on the file of the Subordinate Court, Tirunelveli.

For Petitioner : Mr.S.Meenakshisundaram
Senior Counsel
for Mr.V.Sakthi

For Respondents : Mr.S.Velrajan

ORDER

This Civil Revision Petition has been filed against the order dated 28.09.2022, passed in C.M.A.No.10 of 2022, by the learned Principal District Judge, Tirunelveli,



confirming the fair and decreetal order, dated 08.12.2021, passed in I.A.No.1 of 2020 in O.S.No.196 of 2020, dated 08.12.2021, by the learned Subordinate Judge, Tirunelveli.

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2.The petitioner is the plaintiff before the Principal District Munsif Court, Tirunelveli, in O.S.No.124 of 2020, which was later transferred to the Principal Sub Court, Tirunelveli and renumbered as O.S.No.196 of 2020. The said suit has been filed against the respondents for recovery of possession and for a declaration that the sale deed executed by the first respondent in favour of the second respondent on 31.10.2014 was null and void. The petitioner and the first respondent herein are the children of Late.T.V.Radhakrishnan, who had partly settled the land, which belongs to him, in favour of the petitioner and also had entered into a partition deed with the first respondent. The lands are abutting each other, which were settled in favour of the petitioner and partitioned in favour of the first respondent herein by Late.T.V.Radhakrishnan.

3.It appears that the petitioner and the first respondent decided to promote plots out of the lands that were settled and partitioned by Late.T.V.Radhakrishnan. Reciprocal Power of Attorneys were also executed by the petitioner and the first respondent herein on 27.01.2009. In the above said suit, the petitioner had also filed I.A.No.1 of 2020, for a permanent and temporary injunction, which came to be



dismissed by the learned Principal Sub Judge, Tirunelveli, on 08.12.2021. Aggrieved by the same, the petitioner has filed C.M.A.No.10 of 2022, which has been dismissed on 28.09.2022 by the learned Principal District Judge, Tirunelveli. The operative portion of the impugned order dismissing the appeal, reads as under:-

"6.Point for Final Determination:- The learned counsel for the appellant/petitioner has contended that he has shows plaintiff in the suit. The learned counsel for the plaintiff has contended that the trial court has failed to establish that the Prima Facie case and Balance of Convenience in favour of the plaintiff. Further he has contended that the trial court has simply come to the conclusion that the date of execution between the parties not mentioned in the case hence there is no Prima Facie case is made out to establish the petitioner's case to grant the injunction. The learned Principal Subordinate Judge has passed the order is legally not sustainable one. Hence the Civil Miscellaneous Appeal is to be allowed.

7.On the other hand, the learned counsel for the respondent contention is that the petitioner has not proved that the Prima Facie and Balance of Convenience and irreparable loss is on the side of plaintiff. Further he has contended that the petitioner and 1st responder are brother and sister. The respondents are husband and wife and one Natarajan is the husband of Petitioner. To evading the execution of sale deed the petitioner has executed the sale deed in favour of the 2nd respondent. The 2nd respondent is none other than the wife of the petitioner. The learned counsel for the respondent further would submitted that there is no case that the petitioner has executed the sale deed in favour of the 2nd respondent. Regarding these aspects no averments found in the injunction petition to prove the petitioner's case. Therefore, the petitioner is failed to Prima Facie case to establish that the petitioner was not in possession of the enjoying the suit property. The Prima Facie case is not made out against the petitioner. The said principle is in one of the ingredients which was incorporating in the Order 39 Rule 1 of CPC. The petitioner has not entitled to get the relief of injunction. In the present case at the time of filing of this suit he was owner of the suit property. The plaintiff has seeking the injunction against the true owner who is the 2nd respondent in this case. Therefore, the prima facie is not in favour of the plaintiff. At the same time, the Balance of Convenience is in favour of the 2nd respondent. Since she was enjoying the suit property after executing the sale deed which was executed by Respondent No.1. Further if the petition is not allowed there is no



irreparable loss caused to the petitioner, since the petitioner is not enjoying the suit schedule property. The above said all aspects are considered by the trial court and come to the conclusion that the petitioner is not entitled to injunction. Hence the petition is to be dismissed. The Fair Order and Decreeal Order passed by the Principal Sub Judge, Tirunelveli passed in I.A.No.1/2020 in O.S.196 2020 dated 08.12.2021 is legally sustainable one. Hence this Civil Miscellaneous Appeal is to be dismissed.

8. After taking into consideration of both sides learned counsels arguments and on perusal of trial court records it found that the plaintiff has filed the suit against the respondents 1 and 2 for seeking the relief of Declaration of Sale deed which was executed by the 1st defendant in favour of 2nd defendant as Null and Void and also consequential permanent injunction. Based on the Power of Attorney the 1st respondent has executed the Power of Attorney in favour of the plaintiff. The plaintiff is none other than the own sister of 1st respondent. Thereafter based on the Power of Attorney the petitioner/plaintiff has executed the sale deed in favour of one Natarajan who is the husband of petitioner/plaintiff. Thereafter based on the Power of Attorney the 1st respondent has executed the sale deed in favour of Respondent No.2. This court has gone through the case records it found that the sale deed which are executed by the 1st respondent in favour of 2nd respondent is legally one or not? Seeking the Declaration relief is only after let in the evidence.

9. In the present case, on perusal of case records, it shows that it is the bounden duty of the petitioner to prove the three important ingredients that the Prima Facie case, Balance of Convenience, and irreparable loss is in favour of the plaintiff. In the present case, the above said three important ingredients was not established by the petitioner/plaintiff. In this regard, this Court has gone through the case records, it shows the 1st respondent executed the sale deed in favour of the 2nd respondent based on the Power of Attorney deed which was executed by the petitioner in favour of the 1st respondent. On perusal of the case records, it found that there is no averments raised by the petitioner the agreement was made between the 2nd respondent. Further there is no sale price was not mentioned in the petition as well as the pleadings in the plaint. Further on perusal of case records it shows that the plaintiff has not produced any documents to establish that she was enjoying the suit property on the date of the sale agreement. It shows that after came to the knowledge the Power deed which was executed by the 1st respondent in favour of the petitioner was cancelled. The Power of Attorney deed was marked as Ex.P1. Subsequently on payment, the 1st respondent has executed sale deed in favour of the 2nd respondent. From the



date of sale deed the 2nd respondent has not possession of the suit property. This court has gone through the case records it shows that prima facie case is not made out. Because after the execution of sale deed, the 2nd respondent has not possession of the suit property. Further the plaintiff is not established that which date the deed executed and what amount was fixed for sale consideration and which date was fixed for executed the deed in favour of the 1st respondent. Further on perusal of the case records it shows that both the petitioner and 1st respondent are brother and sister. In the circumstances, this court opinion is that it is the bounden duty of the petitioner to establish that the sale deed was executed by the 1st respondent in favour of the 2nd respondent for valid consideration. The aspect has to be decided in trial proceedings only. Therefore, the prima facie case not made out against the petitioner to grant the injunction.

10.The next ingredient is Balance of convenience. On the date of execution of document the 2nd respondent has not possession of the suit property based on the sale deed which was executed by the 1st respondent in favour of the 2nd respondent. Therefore the balance of convenience is in favour of the 2nd respondent better than the petitioner. Further this court opinion is that the irreparable loss was not caused to the petitioner since the petitioner has not established that he was enjoying the suit schedule property. Further, at the same time, the 2nd respondent is in possession of the suit property according to the sale deed. Therefore, the 2nd respondent is the owner of the property. The injunction cannot be seeking against the true owner. Therefore, the irreparable loss theory is also not established by the petitioner.

11.Further both sides are represented before this court the suit is ripe for trial. This aspect is considered by this court and come to the conclusion that the trial court has initiated the suit proceedings and the commencement of trial is going on. Hence the above said all aspects are considered by this court and come to the conclusion that there is no merits in this appeal and thereby there is no necessity to interfere the Fair Order and Decreetal order passed by the learned Principal Subordinate Judge, Tirunelveli in I.A.No. 1/2020 in O.S.No.196/2020 dated 08.12.2021. Accordingly the Point is answered in favour of respondents.

12.In the result, the Civil Miscellaneous Appeal is dismissed. The Fair Order and Decreetal Order passed by the learned Principal Subordinate Judge, Tirunelveli, in I.A.No.1/2020 in O.S.No.196/2020 dated 08.12.2021 is hereby confirmed. Since the suit is of the year 2020, the learned trial judge is directed to dispose off the suit within three months from the date of receipt



of this order in accordance with law. Both parties shall cooperate for the speedy disposal of the case. Nature and relationship between parties considered by this Court there is no order as to costs."

4.A reading of the above indicates that there is no discussion on merits in the said judgment except the discussion on the scope of Order XXXIX Rule 1 of C.P.C.

5.Both the learned counsel for the petitioner and the learned counsel for the respondents are also unable to point out as to whether the land in S.No.268.8, measuring an extent of 2 cents and the land in S.No.268.10, measuring an extent of 4.05 cents, in all 6.05 cents, are falling within the lands that was settled in favour of the petitioner by Late.T.V.Radhakrishnan or the land that was partitioned, in which the first respondent got a share.

6.Be that as it may, the order of the learned Principal District Judge, Tirunelveli, has also not addressed the fundamental issue. Considering the fact that the suit is of the year 2020 and also considering the fact that written statement has also been filed, I direct the learned Principal Sub Judge, Tirunelveli, to dispose of O.S.No.196 of 2020 as expeditiously as possible, preferably, within a period of 12 months from the date of receipt of a copy of this order. Since the impugned order is also a non-speaking order, it is set aside and the case is remitted back to the Principal District Court, Tirunelveli, to dispose the same on merits and in accordance with law,



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within a period of three months from the date of receipt of a copy of this order. It is made clear that merely because the order that has been challenged in this Civil Revision Petition is set aside and the case is remitted back to the Principal District Court, Tirunelveli, it should not be construed as a stay of all proceedings in O.S.No. 196 of 2020, on the file of the Principal Sub Court, Tirunelveli.

7.This Civil Revision Petition stands disposed of with the above observation and directions. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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25.04.2023

To

1.The Principal District Judge,
Tirunelveli.

2.The Sub Judge,
Tirunelveli.



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C.SARAVANAN, J.

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Order made in
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