



C.R.P.No.1199 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2024
PRONOUNCED ON : 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1199 of 2024
and
C.M.P. No.6181 of 2024

Mrs.Manjulabhen Shah (Died)

1.Meghna Girish
2.Mehul Girish Shah

... Petitioners /
3rd & 4th Judgement Debtors

Vs.

1.V.Prakash Lal
2.Yogesh J.Shah

... 1st Respondent / Plaintiff
... 2nd Respondent / 2nd Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Docket Order dated 02.03.2024 in E.P.No.1462 of 2016, on the file of the X Asst.City Civil Court in O.S.No.362 of 2006, on the file of the IV Asst.City Civil Court.

For Petitioner : Mr.Davidson Devashish

For R1 : Mr.R.Munuswamy
For R2 : Ms.Swathi Priya Raj



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ORDER

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This Criminal Revision is filed to set aside the Docket Order, dated 02.03.2024 in E.P.No.1462 of 2016, on the file of the X Asst.City Civil Judge, Chennai, in O.S.No.362 of 2006, on the file of the IV Asst.City Civil Judge, Chennai.

2. The learned counsel for the petitioner submitted that the Suit 2nd item property is a pathway, common to the Plaintiff, the Defendants and the Petitioners herein. The Plaintiff has falsely claimed that he has exclusive possession of the suit item second property and obtained the impugned decree by playing fraud upon the Trial Court. The Plaintiff clandestinely obtained Patta No.TR/518/2004-05, dated 06.12.2004, in respect of a portion of 54.4 sq.mts., in the Suit Item No.2 property. However the said Patta was cancelled by the Tahsildar, Puraswalkam in Proceedings No.(B2)/0119/2017, dated 14.02.2017, by holding that the parent documents submitted by the Plaintiff showed that the Plaintiff only had a right of easement and not ownership and also pointing out that in O.S No.3672 of 2006, the Plaintiff did not claim ownership in the above suit. The prayer clause (i) in the above suit is directly in respect of the Petitioner's own property, as it is to remove the gate in



their own property and as such, the suit prayer clause (i) directly and adversely affect the interests of the Petitioners making the Petitioners necessary parties to the above suit as on the date of filing of the suit itself. But, without the Petitioners being made parties, the above suit in O.S.No.3672 of 2006 has been decreed vide Judgement and Decree dated 25.11.2010, by the IV Assistant City Civil Judge. The Petitioners' ownership rights over the said property of their grandfather was recorded in the Patta and revenue records as early as 29.09.1995.

3. It is further contended that the Petitioners were subsequently impleaded as Respondents in E.P.No.1462 of 2016 in O.S. No. 3672 of 2006. The proceedings were challenged before this Court in C.R.P. No.2447/2023, wherein the this Court directed the Petitioners to work out their remedy before the Executing Court, under Section 47 CPC. At the time the said C.R.P.No.2447 of 2023 was disposed, E.A.No. 1254/2017 filed by the 2nd Respondent under Section 47 CPC., was pending. However the Petitioners were not parties to the said E.A.No. 1254/2017 and as such, they were not heard. The Petitioners not being parties to the suit in O.S.No.3672/2006 are not eligible to the remedy under under Section 47 CPC. Subsequently, the Execution



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Court passed the Docket Order, dated 02.03.2024 in E.P.No.1462 of 2016 in O.S. No. 3672/2006 whereby, the Petitioners, who were not parties to the suit in O.S.No.3672 of 2006 were also made liable to comply with the execution of the decree.

4. It is further submitted that even before the final judgment was uploaded, the Court Bailiff arrived at the premises on 06.03.2024 and threatened to break the gate and seal the wall in the Petitioner's Property, if the Petitioners failed to do so on or before 08.03.2024. The Petitioners submit that the final judgment in E.P.No.1462 of 2016 is yet to be uploaded on the e-courts portal. The Petitioners, therefore, are constrained to challenge the Docket order available in the e-courts portal. The suit prayer clause (i) in O.S.No.3672 of 2006 directly affects the rights, title and interests of the Petitioners in the Petitioners' property. As such, the Petitioners were necessary parties to the suit as on the date of filing of the suit itself. The Suit in O.S.No.3672 of 2006, is bad for non-joinder of necessary parties. Though the Petitioners' ownership rights over the said property of their grandfather was recorded in the Patta as early as 29.09.1995, the Plaintiff had omitted to array the Petitioners as Defendants in the suit. The Judgement and Decree, dated 25.11.2010, passed by the IV



Assistant City Civil Court in O.S. No. 3672 of 2006, cannot operate against the Petitioners, since the Petitioners not arrayed as Defendants in the said suit.

5. The learned counsel appearing for the petitioners, in support of his contentions, relied on the Judgment of the Hon'ble Apex Court in ***Textile Association Vs. Balmohan Gopal Kurup*** reported in ***(1990) 4 SCC 700***; the Judgment of this Court in ***Guduri Anjayya Vs. Devabhaktuni*** reported in ***(AIR 1943 Mad 381)***; in the judgment in ***Kodia Goundar Vs. Vellandi Goundar*** reported in ***AIR 1955 Mad 281 (FB)***; in the Judgment in ***Official Receiver Vs. Sait Jessasingh*** reported in ***(AIR 1951 Mad 687)*** and the Judgment of Andhra Pradesh High Court in ***Datla Chandraiah Vs. Kothalanka Durga Vara Prasad*** reported in ***(2002 AP LJ (SN) 96)***.

6. The learned counsels appearing for the respondents would submit that the passage in which the defendants tried to interfere by putting up a grill gate with a opening to the passage is in his exclusive possession and enjoyment from 23.11.2004 and Patta is standing in his name. The adjacent properties were originally owned by one Jayantilal Manilal Sha and Manjula Ben Shah. After the demise of



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Jayantilal Manilal Shah, the original defendants namely Manjula Ben Shah and Yogesh J Shah were in possession and enjoyment of the adjacent property. They erected a grill gate in the exclusive passage area of the 1st respondent and started troubling the 1st respondent.

7. The learned counsels further submitted that during pendency of the Suit in O.S.No.3672 of 2006, Manjula Ben J Shah died and necessary amendments were carried out in the plaint. After a full fledged trial, the said suit was decreed in favour of the 1st respondent. There were proceedings before the High Court of Madras regarding issuance of Patta. Nowhere the parties to the litigation claimed that Girish J Shah was also a legal heir of the deceased Jayanti lal Manilal Shah and Munjula Ben Shah. Even in the written statement filed by the original defendants, they did not claim that Girish J Shah, who died in the year 1986 was also entitled to the property. Only during execution proceedings in EP.No.1462 of 2016, the petitioners herein filed E.A.No.1254 of 2017, under Section 47 of C.P.C challenging the executability of the decree in O.S.No.3672 of 2006. They also filed a Civil Revision Petition in C.R.P.No.2447 of 2023 before the High Court of Madras challenging the executability of the said decree. The said Civil Revision Petition was dismissed. The petition under Section



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47 C.P.C filed before the executing court also dismissed. It is further contended that the petitioners never tried to get themselves impleaded in the suit and allowed the proceedings to go on. The petitioners have noticed of the proceedings as early as in the year 2017.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. On perusal of the records it is seen that the Petitioners are the children-cum-surviving legal heirs of one Late Girish J. Shah, who expired on 28.01.1986. The grandfather of the Petitioners one Late Jayanthilal Manilal Shah purchased the ground and premises at Old No.3/16B, New No.36, Ormes Road, Kilpauk, Chennai, measuring to an extent of one ground and 1500 sq.ft., comprised in R.S.No. 3135/7, present R.S. No.3135/35 from one Kota Parthasarathy Naidu, by virtue of Sale Deed, dated 31.03.1966, registered as Document No.1014/1966, on the file of the Office of Sub Registrar, West Madras.

10. According to the Revision Petitioners, on the death of the said Jayanthilal Manilal Shah on 14.07.1975, the right, title and



interest in the premises owned by Jayanthilal Manilal Shah jointly and absolutely vested on the late grandmother of the Petitioners, the deceased 1st Defendant Manjulabhen Shah; the 2nd Respondent and also on the father of the Petitioners Girish J Shah. On the death of the father of the Petitioners Girish J. Shah, on 28.01.1986, the right, title and interests in the Petitioners' property purchased by Late Jayanthilal Manilal Shah partly vested upon the Petitioners. The Petitioners' ownership rights over the said property of their grandfather was recorded in the Patta and revenue records, as early as 29.09.1995 itself.

11. As per the oral arrangement, the 1st respondent obtained a patta in his name in respect of the passage, which is in his possession and enjoyment as early as on 23.11.2004. Thereafter, the owners of the property viz., Manjulabhen Jayantilal Shah (deceased) and Yogesh J.Shah / 2nd respondent erected a Grill Gate in his exclusive passage area. There were exchange of notices and ultimately he filed a suit against the owners of the property before the IV Assistant City Civil Court, Chennai in O.S.No.3672 of 2006, for the relief of mandatory injunction, to remove the iron grill gate erected on the southern side of their compound wall having opening in the suit Item No.2 and close



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the opening and for permanent injunction. Both the Courts below passed an order in favour of the respondents, thereafter, they filed E.P.No.1462 of 2016 for execution of the said decree. The X Assistant Judge, Chennai, issued direction warrant against the Judgment debtors to remove the iron grill gate erected on the southern side of their compound wall having opening in the suit Item No.2 and close the opening as per decree clause 1, by 18.03.2024. As against the said Docket order, the petitioners are before this Court with the present Revision.

12. It could be seen from the records that in the written statement filed by the original defendants, they did not claim that Girish J. Shah, who died in the year 1986 was also entitled to the property. Only during execution proceedings in EP.No.1462 of 2016, the petitioners herein filed E.A.No.1254 of 2017, under Section 47 of C.P.C., challenging the execution of the decree in O.S.No.3672 of 2006. Further, they filed a Civil Revision Petition in C.R.P.No.2447 of 2023 before this Court, challenging the execution of the said decree. The said Civil Revision Petition was dismissed. Thereafter, the petitioners, filed the petition under Section 47 C.P.C., before the executing court and the same also dismissed. The petitioners never



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tried to get themselves impleaded in the Suit and allowed the proceedings to go on. This Court will have to keep in mind that for those days, no steps whatsoever were taken by the petitioners and they were sitting calm and quite without bothering about the proceedings before the Court of law. In the circumstances, I see no justifiable reason to interfere in the docket order, dated 02.03.2024 passed in E.P.No.1462 of 2016, by the X Asst.City Civil Judge in O.S.No.362 of 2006, on the file of the IV Asst.City Civil Judge.

13. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

06.12.2024

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes

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To

1. The X Asst.City Civil Court,
Chennai.
- 2.The IV Asst.City Civil Court.
Chennai.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER
IN
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