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C.R.P.(NPD)No.1226 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.1226 of 2023

and

C.M.P.No.8318 of 2023

1.Selvam

2.Athimoolam

3.Mathankumar

4.Minor Vinothkumar

.. Petitioners

Vs.

1.Murthy

2.Elumalai @ Lawrance

3.Periyasamy

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 13.03.2023, in C.M.A.No.24 of 2022 on the file of the learned II Additional District Judge at Tindivanam confirming the fair and decreetal order, dated 13.10.2022, in I.A.No.311 of 2021 in O.S.No.241 of 2021 on the file of the learned Principal Subordinate Judge at Tindivanam.



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For Petitioners : Mr.K.Balasubramanian
for Mr.S.Jaganathan

For Respondents : Mr.B.Divakaran

ORDER

The present Civil Revision Petition arises against an order passed by the learned II Additional District Judge at Tindivanam in C.M.A.No.24 of 2022, dated 13.03.2023, in confirming the fair and decreetal order passed by the learned Principal Subordinate Judge at Tindivanam in I.A.No.311 of 2021 in O.S.No.241 of 2021 dated 13.10.2022.

2. By these proceedings, the learned Principal Subordinate Judge at Tindivanam granted an order of interim injunction restraining the civil revision petitioners from interfering with the peaceful possession and enjoyment of the 1st respondent.

3. For the sake of convenience, the parties will be referred to as per their rank in the suit.



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4. The 1st respondent as plaintiff presented a suit in O.S.No.241 of 2021. In this suit, he sought a relief of declaration that he is the owner of the property shown as 'A', 'B', 'C', 'D', 'E' and 'F' in the suit plan, and for declaration that the sale deed executed by the 4th defendant in favour of the 1st defendant dated 11.03.2020, and the sale deed executed by the 4th defendant in favour of the 2nd defendant on the same date, and the subsequent settlement deeds executed by the 2nd defendant in favour of the 5th and 6th defendants are null and void. Pending the suit, he sought an interim injunction restraining the defendants from interfering with his peaceful possession of the property.

5. The suit property consists of two items. Originally, the property belonged to the Government of Tamil Nadu. By virtue of the fact that the petitioners belong to the Schedule Caste community, the father of the plaintiff and defendant Nos.1 to 3 was benefited with an assignment Patta. The father of the plaintiff and defendant Nos.1 to 3 is one Murugesan. He is said to have passed away in the year 2017. A portion of the suit property had also been given in assignment in the name of one Periyasamy by the Department of Adi Dravidar and Tribal Welfare. The said Periyasamy by



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way of an unregistered sale deed had received amounts from Murugesan on 20.10.1997.

6. The plaintiff further alleged that the properties which were purchased by Murugesan from Periyasamy and the other properties which were in possession of the family were orally partitioned. In the said oral partition, the suit schedule mentioned properties were allotted to the plaintiff. He would state that taking advantage of the restrictive covenants placed in the assignment deed, the sale deed had not been registered in favour of Murugesan. After the lapse of the period fixed under the assignment, defendant Nos.1 and 2 approached the said Periyasamy and obtained a sale deed in their favour. Having obtained the sale deed in their favour, they immediately settled the property in favour of defendant Nos.5 and 6 by way of a settlement deed.

7. Under the guise of these documents, they came to dispossess the plaintiff and hence, the suit.



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8. It is the case of the defendants that none of the aforesaid averments made by the plaintiff are true. They would deny the oral partition in the family. They alleged that they continue to be the co-owners of the property as it devolved on all after the death of Murugesan. With respect to the land covered by the allotment made in favour of Periyasamy, they would state that they had purchased the property by way of registered sale deeds and consequently, they are the owners thereof. Hence, pleading that they are in possession of the property, they sought dismissal of the interim injunction application.

9. The learned trial Judge received Ex.P1 to Ex.P15 on the side of the plaintiff and Ex.R1 to Ex.R13 on the side of the defendants. After a detailed analysis of the pleadings and documents, he came to the conclusion that the plaintiff has made out a *prima facie* case and granted an order of interim injunction. A Civil Miscellaneous Appeal preferred to the learned Additional District Judge ended in confirmation. Against which the present revision has been presented before this Court.



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10. Heard Mr.K.Balasubramanian, for Mr.S.Jaganathan, appearing on behalf of the petitioners and Mr.B.Divakaran, appearing on behalf of the respondents.

11. The facts set forth above would show that the properties were originally Government properties. The occupants thereof, by virtue of being members of the Scheduled Caste community, were benefited with orders of assignment. Murugesan, who is the father of the plaintiff and defendant Nos.1 to 3, was the beneficiary of one such assignment. Periyasamy, who is a neighbour of the said Murugesan, was also one of the beneficiaries.

12. The specific plea of the plaintiff is that his father/Murugesan had partitioned the properties amongst his four sons and three daughters and had given specific portions to each of the sons. He would plead that after having taken possession of the property, he had put up a construction over the same. In order to substantiate that there has been construction over the property, he has marked Ex.P4 to Ex.P9. The learned Judges have given a finding that these documents stand in the name of the plaintiff.



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13. Per contra, the defendants would rely upon the documents which are said to have been marked as Ex.R7 and Ex.R8. The documents under Ex.P4 to Ex.P8 pre-date these documents by a few years. It is pointed out by Mr.B.Divakaran, appearing on behalf of the respondents that the trial Court as well as the lower Appellate Court had appreciated the fact that Ex.R7 and Ex.R8 have shown that the property is a vacant land. Infact, the learned appellate Judge in Paragraph No.9 had come to a clear and categorical conclusion that the sale deeds had been executed by Periyasamy in favour of defendant Nos.1 and 2 by suppressing the existence of 20 years old RCC building.

14. This is not a situation of the vacant land where the possession of vacant land would follow the title holder of the property. When a person is said to be in occupation of the property, the burden of proof under Section 110 of the Indian Evidence Act lies on a person who is asserting to the contra. When the plaintiff has given *prima facie* proof that he is in possession of the property by constructing a house, and when the defendants plead that it is a vacant land, the burden necessarily lies on them to show why the Court must not believe Ex.P4 to Ex.P9.



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15. Both the Courts below have come to the conclusion that the said evidence is lacking. Whether there was a family partition at the instance of Murugesan, and whether Periyasamy had any right left in him for the purpose of transferring it in favour of defendant Nos.1 and 2 are the issues which have to be gone into only at the time of trial.

16. The Court while dealing with an interim injunction application only deals with the *prima facie* case of possession and balance of convenience. That the parties have been agitating the matter before the police is clear from Ex.P15. This would show that there has been some attempt made by the defendants to dispossess the plaintiff from the property. Hence, on cumulative reading of Ex.P4 to Ex.P9 and Ex.P15, the Courts below have found there is a *prima facie* case in favour of the plaintiff and also the balance of convenience is in his favour.

17. The vehement plea of the civil revision petitioners that the Courts below had granted injunction against the co-owner does not appeal to me on account of the fact that the plaintiff has not come forward with the case that he is the owner but has staked the claim as an exclusive owner of the



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property by virtue of oral partition in the family. The scope of revision under

Article 227 of the Constitution of India while dealing with a concurrent finding of the Courts below granting injunction is rather limited. I cannot interfere unless perversity, illegality or irregularity are writ large. I do not find any of these vices in the orders of the trial Court as well as the lower appellate Court. Hence, the order, passed by the learned I Additional District Judge at Tindivanam, who is having the Full Additional Charge of the II Additional District Court, in C.M.A.No.24 of 2022, dated 13.03.2023, in confirming the order of the learned Principal Subordinate Judge at Tindivanam in I.A.No.311 of 2021 in O.S.No.241 of 2021, dated 13.10.2022, stands confirmed.

18. Accordingly, the Civil Revision Petition stands dismissed. As the parties are close relatives, I am not inclined to impose any costs. The connected Civil Miscellaneous Petition is closed.

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation: Yes/No



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V. LAKSHMINARAYANAN, J.

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To

- 1.The learned II Additional District Judge,
Tindivanam
- 2.The learned Principal Subordinate Judge,
Tindivanam

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and

C.M.P.No.8318 of 2023

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