



WEB COPY



C.M.A.Nos.1732 & 1734 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.02.2024

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.Nos.1732 & 1734 of 2021
and C.M.P.No.

C.R.Jayalakshmi

... Appellant in
both CMA's

Versus

C.Rukmani

... Respondent
in both CMA's

PRAYER: Civil Miscellaneous Appeals filed under Order XLIII Rule (1) of Civil Procedure Code, against the order made in I.A.Nos.2 & 3 of 2020 in O.S.No.552 of 2020, dated 17.02.2021 on the file of the I Additional District Court, Coimbatore.

For Appellant
in both CMA's

: Mr.K.Rahul

For Respondent
in both CMA's

: Mr.C.R.Prasanan



C.M.A.Nos.1732 & 1734 of 2021

COMMON JUDGMENT

WEB COPY

These civil miscellaneous appeals are directed as against the order passed by the I Additional District Court, Coimbatore, dated 17.02.2021 in I.A.Nos.2 & 3 of 2020 in O.S.No.552 of 2020.

2.In the above suit in O.S.No.552 of 2020 is filed for the following reliefs:

(i) declaring that the plaintiff is absolute owner of the suit schedule Item Nos.1,2,3 & 4 properties as per Notarized Will dated 22.10.2018 executed by late P.Subramanian.

(ii)declaring that settlement deed dated 13.01.2020, vide document No.247/2020 on the file of the Joint II Sub-Registrar of Coimbatore allegedly executed by Late P.Subramanian in favour of 1st defendant in respect of suit schedule item Nos.1,2 & 3 properties is null, void, invalid and not binding on the plaintiff.

(iii) for permanent injunction restraining 1st defendant, her men, agents, family members or anybody else claiming under her from in anyway alienate or encumber the suit schedule item Nos. 1, 2 & 3 properties to any third party.



C.M.A.Nos.1732 & 1734 of 2021

(iv) for permanent injunction restraining 1st defendant, her men, agents, family members or anybody else claiming under her from in anyway interfering with plaintiff's peaceful possession and enjoyment of the suit schedule properties item Nos.1, 2 3 & 4.

3.In the above suit, the appellant as plaintiff has filed two applications in I.A.No.2 of 2020 for granting an interim injunction against the defendants interfering from the plaintiffs peaceful possession and enjoyment in the suit property till the disposal of the suit. The plaintiff had also filed another application in I.A.No.3 of 2020 for granting an interim injunction restraining the defendants from encumbering the suit property till the disposal of the suit.

4.The trial Court, however, dismissed the above petitions. Aggrieved by this, the plaintiff is on appeal.

5.For sake of convenience, the parties are referred to as described in the trial Court.



C.M.A.Nos.1732 & 1734 of 2021

WEB COPY

6. According to the plaintiff, the plaintiff is the elder sister of one late C.R.Padmavathi who got married to one P.Subramanian in the year 1977. The plaintiff being the sister of C.R.Padmavathi lived with them for more than 30 years till their demise. The Aadhaar card and family card of the plaintiff proves that the plaintiff was residing in the schedule mentioned property house. It is further submitted that though the sale deed stood in the name of P.Subramanian, the plaintiff and her sister C.R.Padmavathi contributed funds for purchasing the suit property with their savings and by selling their jewels. Thereafter, the plaintiff's sister C.R.Padmavathi and her husband P.Subramanian died issueless. During their life time the said C.R.Padmavathi and her husband P.Subramanian, executed a Will which came into force on 22.10.2018 after the demise of C.R.Padmavathi and P.Subramanian. Thereafter, the plaintiff became absolute owner of the suit property and she is in continuous possession and enjoyment of the same. While so, when the plaintiff demanded rents from the defendants 2 to 7, they informed that the 1st defendant, who is the sister of late P.Subramanian threatened them to pay the rents directly to her, since a settlement deed was executed by her brother



C.M.A.Nos.1732 & 1734 of 2021

P.Subramanian in her favour in respect of the suit property. Hence, the plaintiff was constrained to file the above suit.

7.On the other hand, the 1st defendant in her written statement contended that the suit properties are the absolute properties of her brother P.Subramanian Naicker, who during his lifetime executed a settlement deed in her favour. Therefore, the contention made by the plaintiff that, the plaintiff and her sister contributed funds for purchasing the suit property is false. By virtue of the settlement deed dated 13.01.2020, the 1st defendant is alone the absolute owner of the suit property and therefore, the 1st defendant is alone entitled to collect rents from the other defendants.

8.The learned counsel appearing for the appellant would submit that the plaintiff by virtue of the Will executed in her favour, she is the absolute owner of the suit property and therefore, her possession should be safeguarded till the disposal of the above suit. However, the trial Court without taking into consideration the document marked as Ex.P.1 rejected the petitions filed by the plaintiff, which calls for interference.



C.M.A.Nos.1732 & 1734 of 2021

9. On the other hand, the learned counsel appearing for the respondent would submit that the trial Court has rightly held that, the plaintiff failed to produce any document to establish her possession in the suit property and therefore, the order passed by the trial Court calls for any interference.

10. Heard on both sides and records perused.

11. On perusal of documents and the arguments advanced by the respective counsel, it is seen that except Ex.P1 Aadhaar card, the plaintiff has not established that she is in possession of the suit property. For granting an order of injunction, the plaintiff must establish that she is in possession and enjoyment of the property at the relevant time. In the present case, except the Aadhaar card, no other document was produced by the plaintiff to establish her possession in the suit property. Therefore, the trial Court has rightly dismissed the applications filed by the plaintiff which calls for no interference.

12. However, considering that the suit is of the year 2017, the trial Court is directed to dispose the suit within a period of six months from the



C.M.A.Nos.1732 & 1734 of 2021

date of receipt of a copy of this order, by affording sufficient opportunities to the parties.

13.For the aforementioned reason, these civil miscellaneous appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.02.2024

vsn

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The I Additional District Court, Coimbatore.

2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.Nos.1732 & 1734 of 2021

K.GOVINDARAJAN THILAKAVADI,J.

vsn

C.M.A.Nos.1732 & 1734 of 2021

09.02.2024