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C.R.P.No.1675 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1675 of 2023
and C.M.P.No.10927 of 2023

Ida Dheena Theiphillus

... Petitioner

-Vs-

1.Aparna Girish

2.V.Archana

3.The State of Tamil Nadu
Rep.by its District Collector
Kanchipuram District.

4.The Revenue Divisional Officer
Sriperumbudur, Kanchipuram District.

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 23.02.2023 in I.A.No.4 of 2022 in O.S.No.191 of 2021 of the Court of District and Sessions Judge II at Kancheepuram.

For Petitioner : Ms.Kaviya Sri
For Respondents : RR 1 and 2 - Served, no appearance
Mr.C.Sathish
Government Advocate - for RR 3 & 4

ORDER

This Civil Revision Petition has been presented by the first defendant in O.S.No.191 of 2021. The respondents 1 and 2 herein initiated O.S.No.191 of 2021 on the file of the learned District and Sessions Judge No.II, Kancheepuram seeking for declaration of title and for permanent injunction. An additional relief that the



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order passed by the Revenue Divisional Officer (RDO), Sriperumbudur, Kancheepuram District is null and void has also been sought for.

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

2. The case of the plaintiffs is that they had purchased the property belonging to one Devanathan to an extent of 50 cents. The said Devanathan sold 50 cents in favour of one Elumalai on 02.03.1973. The said Elumalai alienated the property in favour of one Narayanan on 27.02.1972. According to them, Narayanan was already possessed of 50 cents and by virtue of the 50 cents purchased from Elumalai, he became the owner of one acre of land. The plaintiff further alleged that the said Narayanan divided the said property into several housing plots and created a layout. He had sold the property situated in S.Nos.238/1 and 238/2 to one Mallikarjunan on 07.03.1973. The said Mallikarjunan appointed one Subramanian as his power agent, who sold the property in favour of one Vasantha Kumar. Vasantha Kumar subsequently sold 30 cents out of the one acre purchased by him in favour of the first plaintiff on 17.08.2008. Similarly, the said Vasantha Kumar sold another extent of 30 cents in favour of the second plaintiff on 17.12.2009. The plaintiffs claim that themselves and their predecessors-in-title have been in possession and enjoyment of the property for more than 48 years. On the basis of their documents of title, they moved the jurisdictional Tahsildar and obtained mutation of revenue records.



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3. It is their further case that the first defendant initiated a proceedings in W.P.No.33791 of 2019 seeking for cancellation of the patta granted in favour of the plaintiffs, setting up a claim that she is entitled to 43 cents of land in S.No.238/2 by virtue of her purchase from the aforesaid Narayanan. The sale in favour of the first defendant was on 05.09.1985. Alleging that the plaintiffs have grabbed her property, she laid a criminal complaint before the jurisdictional police station at Manimangalam and followed it up with a petition invoking Section 482 of Cr.P.C., in Crl.O.P.No.17797 of 2017. The plaintiffs would state that since a direction had been given by the High Court in W.P.No.33791 of 2019, the third respondent hurriedly conducted an enquiry and passed an order cancelling the patta issued to the plaintiffs. Since a cloud over title of the plaintiffs had been created by virtue of the claim made by the first defendant to an extent of 43 cents, the plaintiffs presented the suit for the reliefs as aforesaid.

4. On being served with summons, the first defendant took out an application to reject the plaint. The grounds on which the rejection was sought for were (a) that there is no cause of action for the suit, (b) that there is an alternative remedy as against the order passed by the third defendant by way of an appeal to the District Revenue Officer (DRO), Kancheepuram and without exhaustion of the said remedy, the suit is not maintainable.



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5. The learned trial Judge issued notice to the plaintiffs and after receipt of a counter, proceeded to dismiss the petition on 23.02.2023. The said order of dismissal is put under revision before this Court.

6. Heard Ms.Kaviya Sri for M/s.D.Daniel for the petitioner and Mr.C.Sathish, Government Advocate for the respondents 3 and 4.

7. Ms.Kaviya Sri has filed her written arguments and would also make the following submissions. She would state that the vendor of the plaintiffs as well as the first defendant Narayanan has not been impleaded as a party. She would submit that a perusal of the order impugned before the trial Court ie., the order of the Revenue Divisional Officer dated 31.08.2021 discloses that there is an appeal remedy available before the District Revenue Officer, Kancheepuram and without exhaustion of the alternative remedy, the civil suit is not maintainable. On these points, she would state that the plaint is liable to be thrown out.

8. Learned Government Advocate would submit that being State respondents, they will abide by any direction that is given by this Court. Respondents 1 and 2, though served, have not entered appearance either through counsel nor are they present before the Court to oppose the revision.

9. I have gone through the records as well as the order impugned before me.



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10. A perusal of the plaint shows there are two schedules to the property. 'A' schedule is claimed by the first plaintiff and 'B' schedule is claimed by the second plaintiff. According to them, since the defendant also claims a right over S.No.238/2 which casts a cloud over their title, they came forward with the suit for the reliefs as aforesaid. According to the civil revision petitioner, she had purchased an extent of 42 cents from Narayanan and plaintiffs do not have a right over the same. Whether the plaintiff has right over the same or whether it belongs to the defendant is a matter which has to be probed into by the learned trial Judge after going through respective records that may be produced by either parties at the time of trial.

11. Insofar as the plea of rejection of plaint is concerned, the averments made in the plaint alone have to be taken to be true. After giving the said treatment to the plaint, the Court would have to see whether a cause of action exists for the plaintiff to file the suit. Taking the averments made in the plaint to be true in this case, the narration of the facts set forth above would show that the plaintiffs are claiming title over the property pleading that Narayanan got a right over one acre of land.

12. It is the case of Ms.Kaviya Sri that Narayanan had only 50 cents and did not have one acre. Whether the extent held by Narayanan is 50 cents or one acre, can be gone into only on the basis of the title deeds of both the parties, which are



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to be produced before the Court. Suffice it to say, the reading of the plaint makes out a cause of action since the defendant had taken several efforts against the plaintiffs' title by filing a writ petition and also lodging a police complaint to the effect that the plaintiffs are attempting to grab her property. The initiation of the proceedings by the first defendant before the revenue authorities or before the police officials is not in dispute. A dispute relating to title cannot be gone into by the revenue authorities or by the police officials. It is the jurisdiction of the civil Court, which is plenary in nature, to decide the issues of title. Therefore, the first argument of Ms.Kaviya Sri that the suit does not have a cause of action deserves rejection and accordingly it is rejected.

13. Insofar as her second plea that as against the order of the Revenue Divisional Officer, an appeal lies to the District Revenue Officer and therefore the jurisdiction of the civil Court is barred, does not stand a moment's scrutiny. Revenue records do not confer title. The order passed by the third respondent Revenue Divisional Officer is only with respect to mutation of revenue records. Even without challenging the said order, the plaintiffs would be still entitled to file a suit for declaration of title. It is by way of abundant caution they seek for a consequential declaration that the order passed by the Revenue Divisional Officer is null and void. In case the plaintiffs fail to prove the prayers (i) and (ii), the Court is not going to grant a relief in prayer (iii). For the mere fact that the plaintiffs have sought for a declaration that the order passed by the third defendant Revenue Divisional Officer is null and void, does not mean the Civil Court has no jurisdiction.



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UDR proceedings for updating of records were not initiated pursuant to any statutory provision which bars the jurisdiction of the civil Court. They were done by the Government in exercise of its executive powers by issuing Government orders. In order to exclude the jurisdiction of the civil Court, the Legislature must have passed appropriate Act barring the said jurisdiction.

14. In the absence of such provision of law, the civil Court can entertain any suits of civil nature and take cognizance of the same by virtue of Section 9 of the Code of Civil Procedure. The suit being one for declaration of title and there being no other authority other than the Civil Court to grant the said relief, the submission of Ms.Kaviya Sri that since the order passed by the Revenue Divisional Officer states an appeal lies to the District Revenue Officer, therefore the suit is not maintainable, certainly does not answer the requirements of law.

15. Insofar as the last plea that the vendor Narayanan had not been impleaded as party to the suit is concerned, this plea has been raised for the first time in the revision. Nonetheless, I would deal with the said contention. Rejection of plaint is within the four corners of Order VII Rule 11 of CPC. Non-impleading of a necessary party can be a ground to dismiss the suit, but it is certainly not a ground to reject the plaint. If Ms.Kaviya Sri feels that the presence of Narayanan is essential as otherwise it is fatal to the suit, it is always open to her to raise that plea by way of a detailed written statement.



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16. Non impleading of a party not being a ground enumerated under Order VII Rule 11 of CPC for rejection of plaint, the said submission need not detain me at all. In addition, Narayanan having alienated whatever interest that he had over the property in favour of the plaintiffs, it is the plaintiffs, who, by virtue of their purchase, claim that they are absolute owners of the property. The predecessors-in-title of the plaintiffs need not be impleaded because the plaintiffs would necessarily have to prove that they are the successors-in-title to the property.

17. In the light of the above discussion, I do not find any merits in the civil revision petition. The Civil Revision Petition is dismissed. The order of the learned District and Sessions Judge-II, Kancheepuram in I.A.No.4 of 2022 in O.S.No.191 of 2021 dated 23.02.2023 stands confirmed.

18. At this stage, I notice that the civil revision petitioner is aged about 93 years. It will be in the interest of all that she sees the end of the litigation within her lifetime. The civil revision petitioner shall file her written statement within a period of two weeks from today. The court, taking into consideration that the first defendant / civil revision petitioner is advanced in age, shall give the suit appropriate attention and ensure that the suit is expedited in all stages, and dispose off the same on or before **31.01.2025**.



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19. With the above observations, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

The Additional District and Sessions Judge
-cum-Fast Track Court-II
Kancheepuram.



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V. LAKSHMINARAYANAN, J.

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