



C.R.P. (PD). No. 3604 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P. (PD). No. 3604 of 2024

&

C.M.P.No.19544 of 2024

G.K.Rathinavel

...Petitioner

Vs.

1.S.Santhamani

2.R.Chinnaswamy

3.M/s.City Estates

Registered Partnership Firm

Rep. by Mg. Partner C.S.S. Rajah

D No.7 Damodaran Nagar,

Kilpauk, Chennai – 10.

4.Director of Town and

Country Planning

D.No.807, Anna Salai,

Chennai – 2.

...Respondents



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Prayer: Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 21.12.2023 passed by the I Additional Subordinate Judge, Coimbatore, made in I.A.No.5 of 2023 in O.S.No.69 of 2018.

For Petitioner : Mr. K.M.Balaji
For Respondent 4: Mr. V.Ramesh
Government Advocate.

ORDER

There is no dispute that the property was originally owned by one Chinnaswamy. Chinnaswamy seems to have faced proceedings before the TANPID, Coimbatore, for having defrauded 100 depositors. The plaint proceeds that he possessed an extent of 12.06 ½ acres, out of which he alienated 2.36 ½ acres in favour of the plaintiff's predecessor in title Ponnusamy. Ponnusamy thereafter settled the property in favour of the plaintiff.



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2. The plaintiff alleged that Ponnusamy was put in possession of an extent of 2.36 ½ acres and had fenced the same and was in exclusive possession. The properties of Chinnaswamy, which were attached by the Government were brought for sale and purchased by the 3rd defendant. The 3rd defendant had alienated 48 cents to the 1st defendant.

3. According to the plaint, the 1st defendant on the strength of this purchase, is attempting to dispossess the plaintiff of the extent which is given to her by her brother Ponnusamy. Hence, the suit for declaration of title and for permanent injunction.

4. In this suit, the 1st defendant took out an application in I.A.No.5 of 2023. This application is for rejection of the plaint. The plea of the 1st defendant is that what was sold by Chinnaswamy to Ponnusamy was 2.20 acres and not 2.36 ½ acres. He would therefore contend that there is no cause of action for the suit. The 1st defendant



would rely upon Section 92 of the Indian Evidence Act, in order to argue that when Ponnusamy had purchased only 2.20 acres, his successor in title, namely, the plaintiff cannot claim a right over an extent of 2.36 ½ acres.

5. After receipt of the counter in the said application, the petition was dismissed by the learned Judge stating that these are matters which can be gone into only at the time of trial.

6. Challenging the order, the present revision.

7. Heard Mr.K.M.Balaji for the petitioner. Mr.K.M.Balaji would state that when the title document of the plaintiff discloses the plaintiff's predecessor in title had only 2.20 acres and not 2.36 ½ acres, hence, the suit for declaration of title to the remaining extent is not maintainable. Therefore, he would state that the order of the Trial Judge requires to be set aside.



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8. I have pointed out the specific plea of the plaintiff in Paragraph Nos.5 and 6 of the plaint that Chinnaswamy had handed over 2.36 ½ acres to Ponnusamy and Ponnusamy was in exclusive possession of the same by fencing the property. Whether Ponnusamy was actually in possession of the extent as allotted by the plaintiff, as stated by the plaintiff, necessarily requires evidence.

9. Furthermore, Section 92 does not bar a suit. It only bars parties from deposing contrary to a written contract. This pre supposes the evidence being on record. I do not find any error in the order passed by the I Additional Subordinate Judge, Coimbatore.

10. In the result, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

05.09.2024

Index : Yes/No
Internet : Yes/No
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To
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The I Additional Subordinate Judge,
Coimbatore.



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V.LAKSHMINARAYANAN, J.

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