



C.R.P.No.3057 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.3057 of 2024 and
C.M.P.No.16486 of 2024

R.Banumathi

... Petitioner

Vs.

K.Gothandaraman (Died),

1.K.Venkataraman

2.Vijayalakshmi

3.Abilash

4.Vishwa

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the Fair and Decreetal order dated 31.06.2024 made in I.A.No.14 of 2024 in O.S.No.75 of 2020 on the file of the District Munsif, Tiruvarur, by allowing this civil revision petition.

For Petitioner : Mr.R.Prabakar

ORDER



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The petitioner/plaintiff filed a petition under Order 23 Rule 1(3)(A) and Section 151 of C.P.C in I.A.No.14 of 2024 in O.S.No.75 of 2020 before the learned District Munsif, Thiruvavur to permit the petitioner to withdraw the suit in O.S.No.75 of 2020 with liberty to institute a fresh suit. The said petition was dismissed *vide* impugned order, dated 13.06.2024. Against which, the present civil revision petition has been filed.

2.The learned counsel for the petitioner submitted that the petitioner/plaintiff filed suit in O.S.No.75 of 2020 against the respondents declaring the settlement deed executed by Kamalambal favouring the defendants in respect of the property in T.S.No.888/4A as a fraudulent, void and illegal and not binding the petitioner. The suit property was originally purchased by the petitioner's husband late G.Rajendran on 10.09.1983 with distinct and separate boundaries *vide* document No.276 of 1983. The property in T.S.No.888/4A is measuring to the extent of 0.24 cents *i.e.*, 10,464 sq.ft, out of which the petitioner's husband purchased 12 cents and occupied remaining 12 cents from the date of purchase. The petitioner's husband was enjoying the entire 24 cents in open from 10.09.1983 without any manner of interference from the vendor or any one. So the petitioner's



husband was perfected title by adverse possession. The petitioner's husband passed away on 04.01.2001 leaving behind his mother Dhanabakiyam and his wife the petitioner herein and one son Karthik and two daughters Priya and Lavanya as his legal heirs.

3.He further submitted that during third week of February, 2020, the respondents/defendants forced the petitioner to sell the suit property which was not agreeable, hence, there was some difference of opinion between them. Later the petitioner came to know that by document Nos.2516 of 2008 and 1546 of 1986, the defendants colluded and prepared forged documents claiming it as a settlement deed as though executed by their mother Kamalambal in document No.2516 of 2008. Claiming the property, the respondents filed written statement stating that the property was assigned in favour of Kamalambal by the Government of Tamil Nadu under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 and The Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965. The suit property in T.S.No.888/4A in Ward-1, Block-18, Tiruvarur Municipality is classified as wet land. To the extent of 18 cents was assigned to Kamalambal by the Government of Tamil Nadu through its Authorized



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Officer on 28.07.1980 by instituting proceedings. On coming to know about the same from the written statement, the petitioner to meet out the defence and to find out the truth sought permission of the lower Court to withdraw the plaint by filing I.A.No.14 of 2024. In I.A.No.14 of 2024, the lower Court held that subsequent to written statement by the defendants, the petitioner came to understand that the Revenue Department granted assignment of patta in favour of Kamalambal, mother of the defendants 1 and 2. Thereafter approached the revenue officials to gather information regarding the proceedings but unable to get any information. Later, the petitioner sought details of the proceedings through RTI from the revenue officials who assigned the land to Kamalambal. The lower Court recorded the petitioner's contention but held that since the petitioner filed an appeal before the revenue officials with regard to settlement deed, he is barred from making such contention, which is not proper. In fact the petitioner filed no appeal against the settlement order. He only sought settlement particulars through RTI. If the suit is continued without sufficient and proper pleadings, in all probability the suit is likely to get dismissed. For that reason only, the petition filed I.A.No.14 of 2024, but the Lower Court not considered the same. The trial of the case is yet to commence.



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4.The learned counsel for the petitioner relied on the judgment of Madhya Pradesh High Court in “**Trilochansingh v. Indrajeet Kaur in Civil Revision No.60 of 2020**” wherein it had held that '*the question for consideration is as to whether the grounds taken by the plaintiff in his application i.e. failure to make necessary pleadings in the plaint and not filing the relevant documents along with it and not making the pleadings in respect of the documents filed along with the plaint can be said to be sufficient grounds for allowing him to withdraw the suit with liberty to institute a fresh suit for the subject matter of present suit.*'

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner had only sought particulars regarding settlement deed through RTI from the Revenue Department, not filed any appeal against the orders of Revenue Department. Without considering the same, the Lower Court held that since the petitioner filed an appeal before the concerned forum with regard to settlement deed, he is barred from making contention claiming at the time of institution of the suit, the petitioner not aware of revenue proceedings.



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6.In view of the above, the impugned order, dated 31.06.2024 made in I.A.No.14 of 2024 in O.S.No.75 of 2020 passed by the learned District Munsif, Thiruvarur is set aside. The learned District Munsif, Thiruvarur is directed to permit the petitioner to withdraw the suit in O.S.No.75 of 2020 with liberty to file a fresh suit after collecting complete particulars arraying necessary parties.

7.In the result, this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

02.08.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes

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To

The District Munsif Court,
Thiruvarur.



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M.NIRMAL KUMAR, J.

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