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CRP.No.3134 of 2022

In the High Court of Judicature at Madras

Reserved on: 26.03.2024

Delivered on : 03.06.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.3134 of 2022

- 1.Nadira Niloufur
- 2.Tassawar Ahamed
- 3.Nadira Nisheth
- 4.Nadira Naaz

... Petitioners

/Defendants 1 to 4

-Vs-

- 1.Mani @ Dhuruvasan
- 2.State rep. By its District Collector
Thiruvallur District, Thiruvallur

..Respondent No.1

/Plaintiff

- 3.The Revenue Divisional Officer
Ponneri Division, Ponneri
- 4.The Tahsildar
Ponneri Taluk
Ponneri

... Respondents 3 and 4/

Defendants 5 to 7



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PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, as against entertaining of suit in O.S.No.204 of 2022 dated 18.08.2022 on the file of the Additional Sub-Court at Ponneri.

For Petitioner : Mr.T.R.Rajagopalan, Senior counsel
for Mr.K.Premkumar

For Respondent : Mr.J.R.K.Bhavanathan for R1
Dr.S.Suriya, Addl.Govt.Pleader for R2 to R4.

ORDER

This Civil Revision Petition is filed as against entertaining of suit in O.S.No.204 of 2022 dated 18.08.2022 on the file of Additional Sub-Court, Ponneri.

2. The 1st respondent herein is the plaintiff in the suit in O.S.No.204 of 2022. The suit is filed for the relief of specific performance of the unregistered deed of sale dated 07.05.1993. The defendants 1 to 4 are the revision petitioners herein. Defendants 5 to 7 are the officials.

3. The averments in the plaint filed by the plaintiff is that, his family was continuously cultivating the suit properties as tenant and succeeds their tenancy and cultivating the properties. The mother of the defendants 1 to 4



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approached the plaintiff for cultivating the lands to an extent of 51.90 ares situated in the suit property. Mother of the defendants 1 to 4 viz., Tharunnisha Behgum executed a lease deed dated 31.01.1990 to and in favour of the plaintiff. The said Tharunnisha Behgum agreed to cultivate the suit property by the plaintiff till his own will and wish and the consideration of lease was fixed as 7 bags paddy per year. Thereafter, plaintiff cultivated the said land till 1993. Tharunnisha Behgum approached the plaintiff to sell out the suit property. Tharunnisha Begum fixed a sale consideration of Rs.12,000/- in respect of the suit property.

4. The plaintiff further averred that he has paid full sale consideration amount of Rs.12,000/- and therefore, the unregistered sale deed dated 07.05.1993 in respect of the suit property was also handed over to the plaintiff. Hence the plaintiff is now cultivating the suit properties, paying kist to the Government. The plaintiff submits in the plaint that he is in peaceful possession and enjoyment of the said property.

5. The plaintiff averred in the plaint that due to wrong issuance of patta by the 7th defendant to defendants 1 to 4, complaint has been filed. At no point of time, the defendants or their predecessors were in possession of the suit



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property. The plaintiff claims that he approached the defendants 1 to 4 to register the sale deed in respect of the suit properties, but they are postponing the same under some pretext and therefore, suit is filed for specific performance to execute and register the sale deed; for permanent injunction restraining the defendants claiming the suit properties and for mandatory injunction directing the defendants 5 to 7 to cancel the Patta bearing No.8077 in respect of suit properties.

6. In the suit in O.S.No.204 of 2022, the plaintiff filed I.A.No.4 of 2022 for ad-interim injunction. The same was granted by the trial court on 18.08.2022.

7. The learned Senior counsel appearing for the revision petitioners/defendants 1 to 4 would submit that after serving of notice along with interim order granted by the trial court only, the defendants 1 to 4 came to know about the filing of the suit. According to the defendants 1 to 4, on receiving the certified copy of the documents, they came to know that the plaintiff fabricated the unregistered sale deed dated 07.05.1993 by forging the signature of defendants' mother as if she received sale consideration of Rs.12,000/- and sold and conveyed the suit property in favour of the plaintiff on



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07.05.1993. Except the bogus sale deed, no other document was filed by the plaintiff to prove his possession and enjoyment over the suit property.

8. The learned Senior counsel appearing for the revision petitioners/defendants 1 to 4 would submit that the trial court Judge, without application of mind and without looking into the documents filed along with the plaint, granted interim order of injunction against the settled legal principles of law. In support of his submissions, learned Senior counsel relied on the following decisions:-

(i) AIR 1954 Supreme Court 215 [Waryam Singh and another Vs. Amarnath and another]

(ii) (2015) 8 Supreme Court cases 390 [Fatehji and company and another Vs. L.M.Nagpal and others]

(iii) (2020) 7 Supreme Court cases 366 [Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through LRs. And others]

(iv) 2021 (4) CTC 570 [K.P.Natarajan and another Vs. Muthalammal and others] .

(v) 1997 (III) CTC 567 [Renuka Devi Vs. D.Manoharan]



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9. The learned counsel for the 1st respondent/plaintiff would submit that the plaintiff filed the suit for specific performance, based on sale deed and other documents. Unless the trial court complete the procedure as stipulated in CPC and the written statement of the defendants is taken on record and thereafter recording evidence let in by parties, striking off the plaint would result in illegal exercise of jurisdiction.

10. Heard both sides.

11. A perusal of records would go to show that O.S.No.204 of 2022 has been filed on the file of Sub Court, Poneeri and on 18.08.2022 ad interim injunction was granted in favour of the plaintiff. As against the said interim injunction and plaint averments, this civil revision petition is filed.

12. At the time of admission, notice was ordered to the plaintiff/1st respondent and other respondents and interim stay was granted and thereafter, the stay granted was extended from time to time.

13. It is also seen from the records that plaintiff's father earlier filed suit in O.S.No.204 of 1984 as against Tharunnisa Begum for similar relief. That



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suit was dismissed. First appeal and second appeal also ended on terms of compromise holding that the defendant is free to enjoy the land morefully described in the schedule to the decree of the court below.

14. The above facts of the case and the litigations preferred by the plaintiff as against the defendants 1 to 4 and their mother would go to show that on the basis of the fraudulent document, the plaintiff tried to be in possession. Such a benefit out of their own fraud cannot be allowed by this court. Accordingly, this court granted interim stay of the injunction order passed by the trial court, thereby, the suit is still in threshold. This court has a duty to see that as far as possible, litigation is avoided and multiplicity of proceedings are avoided. When the court has such a power to grant relief, it should not close its eyes on technicalities.

15. The suit in O.S.No.204 of 2022 is filed for the relief of specific performance of the unregistered sale deed of sale dated 07.05.1993 i.e, after the lapse of 29 years. This itself shows that the unregistered sale deed is a fraudulent one. In the case of *Fatehji and Company and another vs L.M.Nagpal and others* reported in (2015) 8 SCC 390, the legal proposition laid down is that “in a suit for specific performance of agreement to sell



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immovable property, bar of limitation of 3 years is prescribed under Article 54 as to filing of suit”. Applying the said principle and Limitation in the case on hand, this court holds that the when the suit for specific performance was not filed within three years from the date of sale deed, the same is clearly barred by limitation.

16. The Honourable Supreme Court in the decision reported in ***(2020) 7 SCC 366 [DAHIBEN VS. ARVINDBHAI KALYANJI BHANUSALI (GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES AND OTHERS]***, held that “the underlying object of Order 7 Rule 11(a) is that if in a suit no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit”. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.” As such, the court would determine whether a case for rejecting the plaint at the threshold is made out.

17. It is also relevant to note herein that in the present CRP filed praying to strike off the impugned plaint in O.S.No.204 of 2022, the 1st respondent herein viz., Plaintiff though entered appearance has not chosen to



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file counter either to deny or controvert the averments made by the revision petitioners.

18. Apart from the above all, this is the second round of litigation for the Plaintiff-1st respondent herein who entered into compromise in the earlier round of litigation and agreed to surrender vacant possession of the remaining extent of the suit properties to the defendant-deceased Taherunnissa and the revision petitioners herein are the legal heirs of the deceased.

19. The stage of the suit in the trial court would show that it is only at the preliminary stage. Therefore, following the settled legal position that fraud cannot be perpetuated and that the suit is an abuse of the process of the court, rejection of the plaint is necessary. As a matter of fact, 1st respondent/plaintiff has tried to take possession of the property on the basis of fraudulent document and that too after losing the first battle before the trial court, 1st appellate court and the High Court. If he is allowed to continue in possession, that injustice can never be compensated. On the basis of so called oral evidence, truth cannot be suppressed.



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20. For the reasons stated above, this court, strike off the plaint in exercise of power under Article 227 of the Constitution of India, in order to prevent abuse of process of law and to meet the ends of justice.

21. In the result, this Civil Revision Petition is allowed. The plaint in O.S.No.204 of 2022 is rejected. No costs. Consequently, connected miscellaneous petition is closed.

nvsri

03.06.2024

To

1.The Additional Sub-Court at Ponneri.

2.The Section Officer, V.R.Section, High Court, Madras.



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