



Civil Revision Petition (PD) No.4052 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.4052 of 2024

1.K.Mani
2.Yogapriya

.. Petitioners/Plaintiffs

Versus

1.S.Vennila
2.S.Lalitha
3.A.Sagul Hameed
4.S.Gopikrishnan
5.K.Kannan
6.Vatchala

.. Respondents/Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the District Munsif at Kallakurichi to take the suit instituted in O.S.Sr.No.228/2024 on file to be decided on merits and in accordance with law.

For the Petitioners : Mr.V.M.Venkataramana



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ORDER

This Civil Revision Petition seeks for a direction to the learned District Munsif, Kallakurichi to take on file the suit in O.S.Sr.No.228 of 2024 and to proceed the matter on merits.

2. O.S.Sr.No.228 of 2024 is a suit for declaration with the following reliefs:-

“A.Declaration that the Judgment and decree in O.S.No.158/2011 dated 18.03.2013 on the file of the Hon'ble Principal District Munsif Court at Kallakurichi as null and void and not binding on the plaintiffs.

B.Declaration that the settlement deed doc.No.2163/2014 dated 23.07.2014 registered in the office of Joint Sub Registrar No.2, Kallakurichi executed by 1st and 2nd defendants in favour of M.Sambath as null and void and not binding on the plaintiffs.

C.Declaration that the settlement deed doc.No.1196/2016 dated 22.04.2016 registered in



the office of the Joint Sub Registrar No.2, Kallakurichi executed by M.Sambath in favour of the 1st defendant as null and void and not binding on the plaintiffs.

D.Declaration that the General Power of Attorney doc.No.119/2024 dated 09.01.2024 registered in the office of Joint Sub Registrar No.2, Kallakurichi, executed by 1st defendant in favour of the 2nd defendant as null and void and not binding on the plaintiffs.

E.Permanent injunction restraining the defendants, their men, agent, executors, administrators, hence-men from interfering with the peaceful possession of the suit schedule properties.

F.Permanent injunction restraining the defendants, their men, agent, executors, administrators, hench-men from alienating or creating any encumbrance with respect to the suit schedule properties.”

3. The case of the plaintiffs is that the suit schedule mentioned property was purchased by one K.Kannan and Vatchala. They executed a



settlement deed in favour of the 1st plaintiff/1st petitioner and his siblings – S.Vennila and Manjula. Subsequently, the said document is alleged to have been cancelled albeit unilaterally in document No.490 of 2011. Thereafter, Vennila is said to have executed a settlement deed in favour of the 2nd plaintiff/2nd petitioner – Yogapriya by a document No.1437 of 2022 dated 30.03.2022. Similarly, Kannan, the 5th respondent is said to have executed a settlement deed in favour of his only son – K.Mani on 30.03.2022.

4. Claiming that the cancellation of settlement deed that had been executed by Kannan and Vatchala in favour of Vennila is null and void, the present suit for the aforesaid reliefs came to be filed.

5. It is on record that Vennila and Lalitha, the 2nd daughter of Vennila had presented a suit for bare injunction in O.S.No.158 of 2011 on the file of the Principal District Munsif Court, Kallakurichi, as against Kannan and Vatchala. The said suit ended in an exparte decree on 18.03.2013.

6. Pleading that the plaintiffs are not parties to the suit, they sought



for declaration to declare that the decree is null and void and not binding on the plaintiffs. The learned District Munsif, Kallkurichi, had entertained doubts as to how the suit is maintainable as regards the prayer for declaration that the decree in O.S.No.158 of 2011 is not binding on the plaintiffs. The plaintiffs had made an endorsement that as they are not parties to the proceedings in O.S.No.158 of 2011 and the same is not binding on them. Despite the endorsement made by the counsels, the learned Judge has not numbered the suit. Hence, the present Civil Revision Petition.

7. Heard, Mr.Venkatramana for the Civil Revision Petitioner.

8. Mr.Venkatramana, points out that there is no dispute that Kannan and Vatchala are the owners of the property. He states that the present plaintiffs are not parties to the suit in O.S.No.158 of 2011 and in any event that was not a suit for declaration of title but one for bare injunction. He points out from the plaint in paragraph No.18 the decree in the aforementioned suit came to their knowledge only on 10.01.2024. Hence, he states that the repeated returns by the learned District Munsif deserves interference at the hands of this



9. I have carefully considered the arguments of Mr.Venkataramana and have gone through the records including the plaint and the annexed documents.

10. The documents being registered documents, it is clear that Kannan and Vatchala had executed a settlement deed on 23.07.2009 in favour of their children. Thereafter, by an unilateral act of cancellation, the said settlement deed was revoked on 11.02.2011. The issue of whether when a title has been transferred from Kannan and Vatchala in favour of Vennila, Manjula and Mani, whether it can be unilaterally cancelled by the settlor, the same would necessarily have to go through the process of trial. Furthermore, a perusal of plaint document No.9 shows that none of the plaintiffs were parties to the suit in O.S.No.158 of 2011.

11. As rightly submitted by Mr.Venkatarama, the suit in O.S.No.158 of 2011 is not a suit for declaration of title but one for bare injunction. A suit



for a bare injunction is one that operates *in personam* and is not one *in rem*.

Therefore, a person who is not a party to the suit can always plead before the Court that the said decree is not binding on him.

12. A perusal of the Judgment passed in O.S.No.158 of 2011 also shows that the issue of unilateral cancellation has not been gone into by the learned District Munsif, at the time of disposal of the suit. Whether Kannan and Vatchala are bound by the settlement deed dated 23.07.2009 and whether they had any right to transfer the property in favour of the defendants 1 and 2 are matters which necessarily have to undergo the ordeal of trial.

13. This Court in ***Selvaraj and Ors. Vs. Koodankulam Nuclear Power Plant India Limited, Represented through its Project Director*** in C.R.P. (MD) Nos.915, 943, 967, 991 & 330 of 2020 dated 16.07.2021 has categorically held that the Court must take the plaint averments as it is, at the time of numbering and it should not act as an adversarial party to the plaintiff. That role can always be played by the defendants, if so desired.



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14. In the light of the above discussion, the Civil Revision Petition stands allowed. The return made by the learned District Munsif, Kallakurichi, dated 16.07.2024 is set aside. The learned District Munsif, Kallakurichi, shall number the plaint, if it is otherwise in order.

14.10.2024

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Index : Yes / No

Internet: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

Note:Registry to return the original plaint to the petitioner, after obtaining necessary endorsements.

To

The District Munsif at Kallakurichi.



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V.LAKSHMINARAYANAN, J.,

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