



C.R.P. (PD) .No. 3928 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3928 of 2024

&

C.M.P.No. 21475 of 2024

1.V.Pushpaveni

2.Pushpaveni Spinning Mills Ltd.,
Rep. by its partner V.Pushpaveni.

...Petitioners

Vs.

Ponmurugan

...Respondent

Prayer: Petition is filed under Article 227 of the Constitution of India against the order dated 29.02.2024 made in C.M.A.No.10 of 2022 on the file of the IV Additional Subordinate Judge, Coimbatore, confirming the fair and final order dated 01.08.2022 made in I.A.No.1 of 2021 in O.S.No.102 of 2021 on the file of the District Munsif Court, Sulur.



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For Petitioner : Mrs.J.Prithvi

ORDER

This Civil Revision Petition arises against the order passed by the learned IV Additional Subordinate Judge, Coimbatore, in C.M.A.No.10 of 2022 dated 29.02.2024 confirming the order of the learned District Munsif, Sulur, in I.A.No.1 of 2021 in O.S.No.102 of 2021.

2. O.S.No.102 of 2021 is a suit for permanent injunction seeking to restrain the defendant / respondent from interfering with the peaceful possession and enjoyment of the plaintiff / petitioner over the suit schedule property. The case of the petitioner is that her father had purchased the property on 24.07.1972 and had thereafter executed a settlement deed in her favour on 11.03.2005.



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3. The plaintiff also pleads that over the suit property there has been a previous litigation in O.S.No.786 of 2007, on the file of the District Munsif, Coimbatore, which was decreed in favour of the plaintiff. The plaintiff alleges that since the defendant is claiming a rival title over the property and is attempting to disturb the possession she came forward with the suit. The plaintiff pleads that she is running a spinning mill in the name and style of “*Pushpaveni Spinning Mills Ltd.*,” and that if an order of injunction not been granted, she would be put to irreparable loss and prejudice.

4. The defendant entered appearance and filed a detailed counter. According to the defendant, he is in possession of the suit property. He would plead that the total extent of the property is 18.16 acres, of which the original owner one Dhamodharasamy Naidu sold 10.50 acres to Govindha Ammal and retained 7.66 acres. Out of 7.66 acres, 5 acres were donated to Bhoodhan Movement, in the year 1964. The



remaining lands available with Dhamodharasamy Naidu was 2.66 acres. He sold 60 cents in favour of one M.P. Wellington, in the year 1970. After the sale in favour of M.P. Wellington, all that the said Dhamodharasamy Naidu retained was 2.06 acres.

5. However, pleading as if he had excess of 44 cents, a sale deed was created in favour of the plaintiff's father in the year 1972. According to the defendant when Dhamodharasamy Naidu was entitled to 2.06 acres, he could not have alienated 2.5 acres in favour of the plaintiff's father.

6. The learned Trial Judge, after hearing the arguments of both the parties, came to a conclusion that without deciding the extent of the property to which the plaintiff is entitled to, he cannot grant an order of injunction. This order was confirmed in a Civil Miscellaneous Appeal. Hence, the revision.

7. The position of law with respect to interlocutory application is



even if Lower Appellate Court can take a different opinion, if it were to come to the conclusion that the view taken by the Trial Court is probable, then it should not interfere with the appeal. When such is the position under Order XLI Rule 1, the scope of interference with respect of concurrent finding under Order XXXIX Rule 1 and 2 and Order XLIII Rule 1 (r) is further limited.

8. There is dispute in the extent of the property, which is being held by the 1st plaintiff. This hits out at the basic requirement of the prima facie case for the grant of injunction. The Courts below have taken a view that there is no prima facie case in favour of the plaintiff. I am not inclined to interfere with the same that too exercising the power of revision under Article 227 of the Constitution of India. In any event, where there is dispute over the extent and identity of the property an order of injunction cannot be granted. See ***Pankajammal vs. Pichai Nattar***(1978 TLNJ,197).

9. Since the suit is of the year 2021, I am inclined to give a



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direction to the District Munsif, Sulur to take the suit itself for disposal and pass judgement in the same, within a period of 9 months from the date of receipt of a copy of this order.

10. With the above observation, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

1.The IV Additional Subordinate Judge,
Coimbatore.

2.The District Munsif Court,
Sulur.



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V.LAKSHMINARAYANAN, J.

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