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CRP.No.3304 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3304 of 2019
and
CMP.No.21439 of 2019

Poonkodi

... Petitioner

Vs.

Palaniammal (Died)

2.Selvarani

3.Chidambram

...Respondents

(sole respondent died, respondents 2 & 3
are brought on record as Lrs of the deceased
sole respondent viz., Palaniammal vide
Court order dated 15.09.2024 made in
CMP.No.19541/2023 in CRP.No.3304/2019)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 27.04.2019 passed by the District Munsif Court, Namakkal, in I.A.No.913 of 2017 in OS.No.220 of 2017 and consequently allow the said IA.No.913 of 2017 in O.S.No.220 of 2017 as prayed for.



CRP.No.3304 of 2019

For Petitioner : Mr.P.T.Rakesh

For Respondent : R2 & R3 – served-No appearance

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner seeking rejection of the plaint.

2. The respondent filed a suit seeking declaration of title and injunction. The respondent based her claim on an unregistered sale agreement dated 03.08.1987. It is the specific case of the respondent that the guardian of the defendants 1 & 2 executed an unregistered sale agreement in her favour agreeing to sell the suit property for consideration of Rs.24,000/-. It was also stated that entire sale consideration was paid by the respondent.

3. The petitioner herein who was arrayed as third defendant in the suit claiming himself as settlee under the defendants 1 & 2 filed the present application for rejection of the plaint on the ground that oral sale of



CRP.No.3304 of 2019

the immovable property worth about more than Rs.100 is not permissible in law. The said application was dismissed by the Court below on the ground that whether the property was sold to the respondent or not is a matter to be decided at the time of final disposal of the case.

4. The learned counsel for the petitioner submitted that when the respondent based a claim on an unregistered sale agreement, the relief sought for by the respondents with regard to the declaration is not at all maintainable. Therefore, the main suit prayer is barred by Section 17 of the Limitation Act.

5. Even though there is considerable force in the contention of the learned counsel for petitioner that the respondents are not entitled to get declaration based on the unregistered sale agreement said to have been executed in their favour by guardian of the defendants 1 & 2, the respondent can very well prove her possession and seek limited injunction restraining the defendants from interfering with her peaceful possession except by due process of law.



6. It is settled law, even original owner of the property cannot take law into his own hands and try to disturb the settled possession of the third party/trespasser. In this regard, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in **Rame Gowda Vs. M.Varadappa Naidu**, reported in **MANU/SC/1044/2003 : (2004) 1 SCC 769**. The relevant observation of the Hon'ble Apex Court reads as follows:-

“11. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. v. Delhi Administration – MANU/SC/0072/1967 : 1968CriLJ806, Puran Singh and Ors. v. The State of Punjab – MANU/SC/0184/1975 : AIR 1975 SC 1674 and Ram Rattan and Ors. v. State of Uttar Pradesh - MANU/SC/0160/1976 : 1977CriLJ433. The authorities need not be multiplied. In Munshi Ram & Ors. 's case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is, entitled to



CRP.No.3304 of 2019

defend his possession even against the rightful owner.”

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7. Therefore, the entire plaint cannot be rejected. Merely because one of the prayer sought for by the respondents appears to be barred by law, the Court cannot reject the entire plaint especially when there is a scope for the respondent to get lesser relief of injunction based on the averment found in the plaint. The plaint cannot be rejected in part. Therefore, I do not find anything to interfere with the order passed by the Court below dismissing the application for rejection of the plaint. Accordingly, the Civil Revision Petition is dismissed. No costs. The Court below is directed to dispose of the suit without being influenced by anything stated in this order. Consequently, connected Miscellaneous Petition is closed.

19.01.2024

Index : Yes / No

Internet : Yes / No

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WEB COPY



CRP.No.3304 of 2019

S.SOUNTHAR, J.

dna

To

The District Munsif Court, Namakkal.

CRP.No.3304 of 2019
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