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CRP No. 3953 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

CRP No. 3953 of 2024
and
C.M.P. No. 21617 of 2024

S.Yuvarani

... Petitioner

Vs.

M.Tirupathy

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India to set aside the order dated 11.09.2024 in I.A.No.5 of 2023 in O.S.No.172 of 2022, on the file of the District Munsif cum Judicial Magistrate No.1, Hosur.

For Petitioner : Mr.MA.Gouthaman

O R D E R

This civil revision petition is at the instance of the defendant.

2. O.S.No.172 of 2022 is a suit for bare injunction. The plaintiff pleads that the total family holdings was 1.53 acres. Out of 1.53 acres, he would

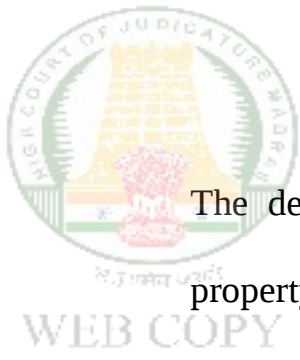


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plead that he had alienated along with his parents, Mylamma and Motappa, an extent of 68 cents. Further, an extent of 250 sq.mts. of the remaining extent had been acquired by the National Highways Authority of India. His plea is that after these two dispositions of the family holdings, he is still in possession and enjoyment of 26 cents. On account of the fact that the defendant attempted to grab this portion, he presented the suit.

2. The defendant, on entering appearance, pointed out that total extent of the family holdings was 1.53 acres. Out of 1.53 acres, the plaintiff along with his parents had alienated an extent of 1.43 acres leaving in his hands only 10 cents. Out of this 10 cents, as seen from the plaint, 250 sq. mts had been acquired by National Highways Authority of India. Therefore, his claim that he is in occupation of 26 cents is false. He alleged, an attempt is being made to grab at the extent of the property, which he had already alienated in favour of the defendant.

3. The defendant would plead that the plaintiff had alienated 1.43 acres in favour of one N.Balasubramanyam and K.A.Nagaraj. The said N.Balasubramanyam and K.A.Nagaraj had alienated, whatever they had purchased, by way of a registered sale deed on 09.05.1997 to the defendant.



The defendant would further plead that she did not attempt to grab the property, but had only attempted to demarcate the land by approaching the jurisdictional Tahsildar to survey the land and mark the boundaries. After having sold the property, since the plaintiff filed a suit for injunction, the defendant claimed it as an abuse of process of court and wanted the plaint to be rejected. Hence, she filed an application under Order VII Rule 11 to reject the plaint.

4. The learned Trial Judge numbered the application as I.A.No.5 of 2023 and received a counter from the plaintiff.

5. The plaintiff filed a detailed counter. He accepted that on 07.12.1994, he along with his parents had alienated 68 cents in S.No.101/2I and an extent of 75 cents in S.No.101/2J. He would plead that thereafter, the National Highways Authority of India had acquired 250 sq mts. in the balance held by him. He would further plead that after such alienations, he continued to be in possession of 26 cents and it is this extent that he is entitled to. Hence, there is a cause of action for the suit and therefore, the petition deserves dismissal.

6. The learned trial Judge on consideration of the petition and counter



came to the conclusion that the plaintiff makes out a cause of action and the plea of fraud that has been raised by the defendant could be gone into only at the time of trial. Having come to this conclusion, the learned judge dismissed the petition. Hence, the revision.

7. I have heard Mr.Gouthaman for the civil revision petitioner.

8. Mr.Gouthaman would take me to the plaintiff documents 1 to 3 to point out that it is admitted in the document filed by the plaintiff that the family owned only 1.53 acres and having alienated 1.43 acres, it does not lie in the mouth of the plaintiff that he is entitled to 26 cents. Therefore, the suit is an abuse of process and does not deserve to be on the file of the Court. He would further point out that it is not the intention of the defendant to touch one inch into the holdings of the plaintiff that had been retained by the plaintiff after the sales dated 01.09.1978 and 07.12.1994. He pleads the plaintiff, taking advantage of the fact that the property had not been demarcated, is making a claim more than what he is entitled to.

9. I have carefully considered the submission of Mr.Gautaman.

10. The principle of law that governing rejection of plaintiff is that I have to read the plaintiff and documents filed along with it and thereafter, came to a conclusion that the plaintiff is hit by any one of the considerations under Order 7



Rule 11 (a) to (d) of the Code of Civil Procedure.

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11. Mr.Gautaman is right that the reading of the sale deed dated 07.12.1994 shows that the plaintiff along with his parents had alienated an extent of 68 cents in S.No.101/2I and an extent of 75 cents in S.No.101/2J. Even if I were to assume this as admission by the plaintiff, this does not exhaust the holdings of the plaintiff. Whether he is entitled to 10 cents or 26 cents as pleaded by him is certainly a disputed question of fact. If it is a disputed question of fact, I am afraid that I am not in a position to reject the plaint. There are triable issues and the learned Trial Judge having given cogent reasons to dismiss the application for rejection of plaint, I am not in a position to interfere with the said order.

12. Having said this, I have to further point out the entire dispute relates to the holdings of the plaintiff as per the sale deeds dated 01.09.1978, 07.12.1994 and 09.05.1997.

13. If the plaintiff claims that he had an extent more than what had been alienated on 07.12.1994, then certainly it requires demarcation of the boundaries of the property. Though the suit is only for permanent injunction,



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since there is a dispute in the extent and the identity of the property, it certainly requires a report of the Advocate Commissioner together with a plan.

14. Mr.Gautaman assures that he will file an application for appointment of an Advocate Commissioner. I am sure that if such an application is filed, the learned District Munsif will appoint an Advocate Commissioner to survey the suit land along with a surveyor on the basis of the documents that have been filed by the plaintiff and the defendant and thereafter, proceed with the trial.

15. With the above observations, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

16. The defendant, having pursued the Order VII Rule 11 application for 18 months, has not filed his written statement. He shall do so within a period of four weeks from today.

24.09.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No



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To

1. The District Munsif cum Judicial Magistrate No.1, Hosur.



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V.LAKSHMINARAYANAN, J.,

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