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C.R.P.No.4387 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4387 of 2023
and C.M.P.No.26611 of 2023

I.Ramaraj

-Vs-

... Petitioners

1.The Trust Association Of The
Advent Christian Convergence Of India
Private Ltd Rep.by Its President
Rev.S.R.Paul Aruldoss
A.A.M.compound, Gandhi Salai
Velachery 42.

2.A.Seetha

3.C.Ramu

4.R.Thilagam

5.C.Srinivasan

6.K.Anandh

7.D.Sukumar

8.J.Jeevanantham

9.M.Lucas

10.Y.Carl Marx

11.V.Samuel

12.The Sub Registrar

Neelangarai Office at

Neelangarai, Chennai 41.

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decretal order passed in IA.No.4 of 2022 in OS.No. 17 of 2009 dt. 28.8.2023 on the file of District Munsiff Court Alandur by allowing the CRP.



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For Petitioner : Mr.Umacharan
For Respondents : Mr.M.Thangadurai - for R1
RR 2 to 5 - Not ready in notice
RR 7 and 8 - Not ready in notice
RR 9 and 11 - Died
Mr.C.Sathish
Government Advocate - for R12

ORDER

This civil revision petition arises at the instance of defendants 7 and 8. The first respondent presented O.S.No.17 of 2009 seeking for the following reliefs:

- a) for declaration to declare that the sale deed executed by the defendants 1 to 6 in favour of the defendants 7 and 8 dated 09.01.2007 registered as Document No.103 of 2007 in the office of the 13th defendant in respect of the suit property as null and void and not binding upon the plaintiff.
- b) for declaration to declare that the gift deed executed by the defendants 7 and 8 in favour of the defendants 9 to 12 dated 06.03.2007 registered as document No.1211 of 2007 in the office of the 13th defendant in respect of the suit property as null and void and not binding upon the plaintiff.
- c) for a consequential injunction restraining the defendants 7 to 12 their men, agents, servants or any other person or persons claiming through them from in any manner alienating or encumbering the suit property to any third parties.
- d) for a consequential injunction restraining the 13th defendant his men, agents, servants etc., from in any manner entertaining or registering any documents in respect of suit property.



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2. This suit was originally presented as O.S.No.17 of 2009 before the learned District Munsif at Alandur. Subsequently, it was transferred to file of the Principal District Munsif-cum-Judicial Magistrate, Sholinganallur. Subsequent to the formation of a new Court viz., District Munsif-cum-Judicial Magistrate at Sholinganallur, the suit was taken on file as O.S.No.946 of 2024. The suit is now listed for hearing on 20.08.2024 for completion of service consequent to the transfer.

3. Defendants 7 and 8 filed an application for rejection of the plaint. The ground for rejection of plaint is that the suit has no cause of action. They would plead that the property was registered in favour of the Guindy Advent Christian Denomination Women Home and Foreign Mission Society and that has no connection with the plaintiff. They would state that the document on the basis on which the plaintiff stakes a claim is a fake and fraudulent document and hence no title passed on to the plaintiff. They would also plead that the Guindy Advent Christian Denomination Women Home and Foreign Mission Society has not been made party to the suit and therefore the suit has to be rejected for non-joinder of necessary parties. On these averments, they pleaded that the plaint is liable to be rejected. This application was received in I.A.No.4 of 2022.

4. After issuing notice to the plaintiffs and on receipt of a counter, the learned Judge came to a conclusion that the application deserves an order of dismissal and accordingly dismissed it. Aggrieved by the same, the present civil revision petition has been filed before the Court.



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5. Notice was ordered in the application and though the respondents were served and engaged a counsel by name Thangadurai, he was not present before the Court for any of the hearing dates.

6. Mr.Sathish, Government Advocate represents the Sub-Registrar, Neelangarai. The other respondents, though served, have neither entered appearance nor have they appeared in person.

7. Mr.Umacharan argues that the plaint has to be rejected on account of the fact that the original owner viz., the Guindy Advent Christian Denomination Women Home and Foreign Mission Society has not been made a party to the proceedings. He would state that the document on the basis of which the plaintiff claims right over the property is a fraudulent one. He states the vendors who have executed the document, passed away long before the execution of the sale deed. He would state that the learned trial Judge did not apply his mind to these facts and had he done so, the suit would have been removed from his file by way of rejection.

8. Mr.Sathish, Government Advocate would submit that being State respondents, they will abide any order passed by this court in this revision and also in the suit.



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9. For the purpose of a rejection of plaint, the averments made in the plaint alone matter. I have to take the averments made in the plaint to be true and thereafter proceed on that basis. Para 5 of the plaint discloses that the property originally belonged to one Karian. He had mortgaged the property with one Thulasi Pandithar on 16.04.1930. The said Thulasi Pandithar, to enforce the mortgage, presented O.S.No.166 of 1935 and obtained a decree on 16.07.1935. As the amounts remained unpaid, the said Thulasi Pandithar got the sale deed for the property in his favour. Subsequently, the plaintiff claims that its predecessors-in-office had purchased the property from the legal heirs of Thulasi Pandithar viz., one V.T.Govindarajan and others by way of a sale deed dated 20.06.1956. The plaintiff alleges, after the purchase they took possession of the property and put up a Church and has been using it as a place of workshop ever since.

10. They would plead that the defendants 1 to 4 had presented a suit in O.S.No.353 of 2002 against the plaintiff's predecessor-in-office of the present President in their individual capacity and obtained interim order. This interim order was vacated and the appeal preferred by them also ended in dismissal. The Civil revision petition preferred against the said orders in C.R.P.Nos.1195 and 1196 of 2005 also ended in dismissal.

11. They would state that the attempt made by the grandchildren of the original owner Kariyan to stake a claim over the property by presenting the aforesaid suit ended in failure when the suit was dismissed on 05.01.2007. They



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would plead, another suit came to be filed in O.S.No.89 of 2006 over the very same property by the defendants 1 to 6. In order to create a cloud over the title, the defendants 1 to 6 alienated the property in favour of defendants 7 and 8 and hence they came forward with the present suit.

12. On being served with the summons, the defendants filed a detailed written statement stating that the original owner Karian died in the year 1928 and by no stretch of imagination, he could have executed a sale deed in favour of Thulasi Pandithar in the year 1935. They would plead that the plaintiffs never took possession of the property and the documents on the basis of which the plaintiff stakes a claim to be in possession are all fabricated ones and results of acts of forgery. They would plead that the cause of action does not exist and the suit ought to be dismissed. As pointed out, the suit has gone from one Court to another and now finally landed up before the Court of District Munsif-cum-Judicial Magistrate, Sholinganallur.

13. My reading of the plaint shows that there is a cause of action for the suit. This is because, as pointed out above, I have to take the averments made in the plaint to be true. Taking the averments to be true, the case of the plaintiff is that it had purchased the property in 1956 and became absolute owner by virtue of the alienation made by the original owner Karian in favour of the predecessor-in-title of the plaintiffs viz., Thulasi Pandithar. Whether the sale deed is an act of fabrication and whether Karian was dead on the date of the alleged sale deed are all matters



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which require proof. When matters require proof, it cannot be a ground for rejection of plaint. Both the points urged by Mr.Umacharan would necessarily have to go through the test of trial. Hence, I do not find any reason to interfere with the order of the learned District Munsif at Alandur in dismissing the petition in I.A.No.4 of 2022 in O.S.No.17 of 2009 dated 28.08.2023.

14. Taking note of the fact that the suit has been pending for the past 15 years, I requested a report from the learned District-Munsif-cum-Judicial Magistrate at Sholinganallur as to how long will he take to dispose of the suit. The learned District Munsif has sent a report dated 01.08.2024 stating that if the parties cooperate, he will be able to dispose of the suit within a period of six months. Being a suit for declaration, learned District Munsif is granted nine months time to dispose of the suit. The time limit of nine months will commence from the date on which the plaintiff and the defendants enter appearance before the learned District-Munsif-cum-Judicial Magistrate, Sholinganallur.

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

02.08.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

The District-Munsif-cum-Judicial Magistrate
Sholinganallur.



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V. LAKSHMINARAYANAN, J.

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