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CRP.No.5084 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

C.R.P.NO.5084 OF 2023 &
CMP.NO.29553 OF 2023

Thilagavathi @ Sivagami .. Petitioner

Vs

R. Sudha .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order passed in I.A.No.18 of 2023 in O.S.No.166 of 2009 on the file of District Munsif Court, Perundurai, dated 18.10.2023.

For Petitioner : Mr. J. Prithivi

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order passed in I.A.No.18 of 2023 in O.S.No.166 of 2009 on the file of District Munsif Court, Perundurai, dated 18.10.2023.

2. The learned counsel for the petitioner submitted that the



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petitioner is the 1st defendant and the respondent is the plaintiff in O.S.No.166 of 2009 before the District Munsif, Perundurai. The respondent/plaintiff has filed the above suit with the following prayers;

1. to declare the sale deed executed by the 6th defendant in favour of the 1st defendant dated 01.11.2007 bearing Document No.5278 of 2007 is void, inoperative and not binding upon the plaintiff.

2. For grant of mandatory injunction directing the defendants 2 to 5 and their officials to disconnect the service connection bearing No.022-004-1087 granted on 26.08.2011 in favour of the 1st defendant and for costs of the suit.

3. He further submitted that the case of the petitioner is that the respondent/plaintiff is a vendor of the suit properties belonging to the 7th defendant who acquired the said properties through a partition deed dated 12.02.1996. The respondent/plaintiff purchased the suit properties from the 7th defendant by a sale deed dated 24.05.2004. According to the respondent/ plaintiff, since there was an omission with respect to a Well and irrigating channel in the description of property in the sale deed dated 24.05.2004, a subsequent sale deed was executed by the 7th defendant on 22.08.2007 and based upon such sale deed dated



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22.08.2007, the respondent/plaintiff, claiming exclusive right over the

Well in the suit properties, attempted to obtain a service connection with respect to above said Well, but the electricity officials refused the same on the ground that the mother of the 7th defendant, namely Samiyathal had executed a sale deed dated 01.11.2007 in favour of petitioner with respect to the suit properties and other properties. Therefore, the plaintiff/respondent has filed a suit in O.S.No.166 of 2009 before the District Munsif Court, Perundurai for the relief of declaration of the sale deed executed in favour of petitioner as null and void and for the relief of mandatory injunction directing the electricity officials to disconnect the service connection granted in her favour with respect to a Well located in RS.No.78/29.

4. According to respondent/ plaintiff, her rights in the suit properties has also been affirmed by a decree and judgment passed in A.S.No.23 of 2007 before the Fast Track Court, Erode. In the sale deed dated 24.05.2004, there was an omission with respect to the Well and irrigating channel in the description of property. In order to rectify the same, a subsequent sale deed was executed by her vendor on 22.08.2007. Based on the said sale deed, the respondent/plaintiff claims exclusive



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right over the Well in the suit properties. But when the plaintiff attempted to obtain electricity connection with respect to abovesaid Well, the electricity officials refused to grant service connection on the ground that the 6th defendant, who is the mother in law of petitioner, had executed a sale deed dated 01.11.2007 in favour of petitioner with respect to suit properties and other properties. Therefore, in order to declare the sale deed executed in favour of petitioner as null and void, the present suit in OS No.166 of 2009 was filed for declaring the sale deed executed in favour of petitioner as null and void and for the relief of mandatory injunction directing the electricity officials to disconnect the Electricity Service Connection granted in favour of the petitioner. The suit was initially filed for permanent injunction with respect to electricity connection, but subsequently, the plaintiff/respondent amended the prayer for mandatory injunction on the ground that service connection was granted pending suit.

5. Learned counsel for the petitioner submitted that the sale deed executed in favour of the plaintiff does not mention about the electricity connection, whereas, as per the sale deed executed in favour of petitioner/1st defendant, she was entitled to exclusive service connection.



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The 7th defendant/vendor of the plaintiff have no right over the Well as per the Partition Deed dated 12.01.1996, therefore the subsequent sale deed with respect to Well by the 7th defendant in favour of the plaintiff is invalid.

6. It is the case of the petitioner that the sale deed in favour of the plaintiff does not mention about the electricity connection, but in the sale deed executed in favour of the petitioner, it was mentioned that the petitioner is entitled to exclusive service connection. In the above circumstances the petitioner filed I.A.No.18 of 2023 to reject the plaint on the ground that there is no cause of action against the petitioner and the suit is barred under the provisions of the Electricity Act, 2003. The learned trial judge dismissed the said I.A. on the ground that even though the suit is barred under the Electricity Act, it cannot be rejected partly. Aggrieved against the same the present civil revision petition is filed.

7. He further submitted that the impugned order passed by the trial judge in dismissing the petition filed for rejection of plaint is unsustainable in law. The plaint filed by the plaintiff is barred under section 145 of the Electricity Act. The trial judge erred in rejecting the



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plaint even though the suit was barred under law. Thus he prayed for allowing the Civil Revision Petition.

8. The fact reveals that the petitioner is the 1st defendant and the respondent herein is plaintiff in O.S.No.166 of 2009 on the file of District Munsif Court, Perundurai. The plaintiff filed the suit against the defendant. The first prayer is declaring the sale deed executed by the 6th defendant in favour of the first defendant on 1.11.2007 in Document No.5227 of 2007 is void and inoperative and not binding on the plaintiff. It is noticed that the 2nd prayer seeking a direction to the officials of electricity department to disconnect the electricity service connection granted in favour of the 1st defendant. Both the prayers sought for in the plaint are interconnected and it has to be adjudicated properly before the trial court. In the circumstances, this court is of the view that there is no ground for rejecting the plaint. Therefore, this court is of the view that the trial court rightly dismissed the petition filed by the petitioner. I find no merits in this petition. Hence this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: yes/no

Internet:yes/no

To

The District Munsif Court,
Perundurai

V. SIVAGNANAM, J.

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