



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.863 of 2020

and

C.M.P.(MD)Nos.5713 of 2020 and 14114 of 2023

Adaikkan

... Petitioner

-VS.-

1.Solammal @ Solaimmal

2.Nallammal

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order in I.A.No.611 of 2019 in A.S.No. 40 of 2019 dated 18.02.2020 on the file of the Subordinate Court, Melur.

For Petitioner

:Ms.Deepa Jothi

for Mr.R.Mariappan

For R2

:Mr.S.A.Ajmal Khan



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ORDER

The present Civil Revision Petition has been filed challenging the order passed in I.A.No.611 of 2019 in A.S.No.40 of 2019 dated 18.02.2020 on the file of the Subordinate Court, Melur.

2.The petitioner is the first defendant in the suit. The suit was filed for specific performance and for other reliefs. The suit was decreed by the trial Court. Challenging the same, the petitioner has filed an appeal in A.S.No.40 of 2019 before the Subordinate Court, Melur. During the pendency of the first appeal, the petitioner herein filed an application in I.A.No.611 of 2019 in A.S.No.40 of 2019 for marking documents by contending that the the Revision Petitioner, who was arrayed as the first defendant in the suit, had given power to the 2 and 3 defendants, who are his parents.

3.The first appellate Court while considering the contents of the interlocutory application had held that the petitioner did not enclose any document, which they wanted to mark before the first appellate Court and dismissed the application by recording the above reason. Challenging the said



order, the present Revision Petition is filed.

4.The main challenge is with regard to the assignment of patta granted in favour of the defendants in the year 1994. In the assignment patta, there were twin conditions assailed, which are (1)the assignment patta granted in favour of the defendants is a harijan patta, in which after the assignment patta granted in favour of the petitioner, the same shall not be sold within a period of twenty years from the date of assignment; and (ii) even after completion of twenty years, the assignee has power to sell the property only to the people belonging to SC/ST community.

5.Before the trial Court, the petitioner was not able to produce the documents to establish that the assignment was made in favour of the petitioner. Now, the present application in I.A.No.611 of 2019 was filed before the first appellate Court in A.S.No.40 of 20198 to mark the assignment patta.

6.Heard the learned Counsel on either side.



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7. Ms. Depea Jothi, learned Counsel for the Revision Petitioner submitted that the Revision Petitioner is the physically challenged person. The Revision Petitioner got assignment patta in his favour. There was only an agreement of sale entered between the defendants and the third party in the year 2005, though assignment patta was granted in the year 1994. The sale agreement in the year 2005 will not cause an impediment, as there was no sale taken place.

8. The contention of the learned Counsel for the petitioner is strongly refuted by the learned Counsel for the second respondent that the order passed by the first appellate Court that in the absence of any documents annexed to be marked before the first appellate Court, the petition cannot be allowed, is a well considered order and there is no infirmity in the order of the first appellate Court.

9. The only question that was decided by the trial Court as well as the first appellate Court is whether the defendants was having a valid assignment patta for the suit schedule property. In the absence of any such document, which was not produced before the trial Court or before the first appellate



Court, filing an application without any document to be marked cannot be acted upon. This Court sees no infirmity in the order passed by the first appellate Court and in view of the same, the order passed by the first appellate Court needs no interference and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2024

Internet : Yes/No
NCC : Yes/No
Index : Yes/No

To

The Subordinate Judge, Melur.



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N.SENTHILKUMAR, J.

cmr

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