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C.R.P (PD) No.250 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2025

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

C.R.P (PD) No.250 of 2025

and

C.M.P.No. 1663 of 2025

1. A.Prasad

2. Induja G

... Petitioners

VS.

Srinivasa Rao

Rep. by his power agent

Mr.Vijaya Raghunathan.

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 16.12.2024 made in IA.No.5 of 2024 in OS.No.1193 of 2024 on the file of the XX Assistant City Civil Court, Chennai.



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For Petitioners : Mr. T.Murugamanickam
Senior Counsel
For Babu Rangasamy Associates

For Respondent : Mr. G.Sarath Babu.

ORDER

The petition is filed against the order dated 16.12.2024 made in IA.No.5 of 2024 in OS.No.1193 of 2024 on the file of the XX Assistant City Civil Court, Chennai.

2. Challenging the dismissal of their application under Order VII Rule 11 (a) (d) r/w Section 151 of the CPC by the XX Assistant Judge, City Civil Court, Chennai, the defendants are the petitioners before this Court. For the ease of understanding the parties are referred to in the same litigative status as before the Trial Court. The facts are briefly set out herein below.



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3. The plaintiff has filed the suit OS.No.1193 of 2024 on the file of the aforesaid Court seeking the following relief:

“(a)Declaring the plaintiffs as the absolute owner of the suit 'B' schedule property and consequently grant a permanent injunction restraining the defendant, his men, agents, servants or anybody claiming under him, from him in any manner interfering with the plaintiff's peaceful possession and enjoyment of the same;

(b)Temporary injunction restraining the defendant to not to park before the suit B schedule property.”

4. The suit A schedule property is piece and parcel of land bearing Old No.15 New No.35, Saravana Mudalai Street, Thyagaraya Nagar, Chennai, bounded within 4 boundaries. The extent of the property has not been provided.



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5. The B schedule property has been described as a Portico marked in the plaint measured 10 X 10, 100 sq.ft., and its boundaries are described as east by another portico, west and south by passage owned by R.Raju on the north by open land which is common to all.

6. The plaintiff's case is that in the year 1987 his mother Savithri Shivaram, had purchased a flat No.10 in the 2nd floor of the building called RR flats situate at No.15, Saravana Street, T.Nagar, Chennai, having separate build up area of 1100 sq.ft., together with 1/8th undivided share in the land measuring an extent of 3752 sq.ft., and 1/20th undivided share in a passage measuring an extent of 800 sq.ft., The flat was purchased from one V.Ramasamy who is represented by his power agent Raju under a registered sale deed dated 25.07.1987.

7. The plaintiff's case is that his vendor had assured his mother that she would be allotted a parking space. In pursuance of this agreement the plaintiff's mother and said Raju had entered into a sale



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agreement dated 19.03.1992 in respect of the B schedule property for which his mother paid a sum of Rs.30,000/-.

8. The plaintiff's mother had been using B schedule property for parking a car from the day of its purchase till her death on 15.04.2006. The plaintiff's mother had left behind her surviving, Shivram Narasimhiah, the plaintiff's father, the plaintiff and his sister, Preetha Manmohan. Their father was in possession and enjoyment of the flat till his death on 27.10.2017. On his death, the plaintiff and his sister had become absolute owner of the property, namely, the A and B schedule property.

9. The plaintiff's case is that his sister conveyed her 50% share in the property in favour of the plaintiff. Therefore, the plaintiff became absolute owner of the A schedule property together with the B Schedule property.



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10. It is the plaintiff's further contention that flat No.11 in the second floor was purchased by one T.Padmini under a registered sale deed dated 16.07.1983. She had a separate built up area together with 1/8th undivided share of land for flat and common area and 1/20th undivided share of land in the common passage. She had however not acquired any right for parking her car in the B schedule property. By her last will and testament Padmini bequeathed the property purchased by her in favour of Ravindran, Sathi Devi and Priya Lakshmi.

11. They had got the Will probated and thereafter sold the same to P.T.Ravikumar, who inturn sold the same to the defendants under a registered sale deed dated 11.05.2018. Despite the fact that the original owner had no right to the B schedule property the defendants taking advantage of the mistake with reference to the common passage caused disturbance by frequently parking the vehicle in the B schedule property. Despite request to refrain them from parking vehicle the defendants continued to do so.



WEB COPY 12. The plaintiff who has rented out the property would submit that his tenants are also not in a position to effectively and peacefully enjoy the B schedule property. Therefore, the plaintiff has come forward with the suit in question.

13. The defendants on entering appearance have come forward to file IA.No.5 of 2024 to reject the plaint in OS.No.1193 of 2024 on the file of the XX Assistant City Civil Court, Chennai. The grounds on which the rejection was sought for are as follows:

(a)The declaration is on the basis of an agreement which cannot be enforced.

(b)The suit is barred by limitation.

(c)It is a vexatious litigation as the probability of the plaintiff getting a decree is rather remote.



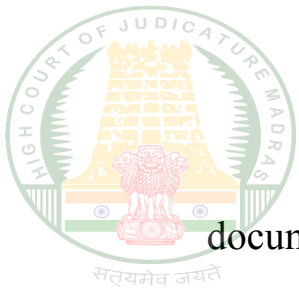
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14. The plaintiff / respondent had filed a counter denying these contentions.

15. The learned XX Assistant City Civil Judge, Chennai after hearing the parties had dismissed the said application by contending that the plaintiffs have made out a cause of action and as regards the issue with reference to the unregistered document, the Court would hold that the admissibility of the document has to be considered only at the time of evidence. With reference to limitation the learned Judge held that it is a mixed question of fact and law. Therefore, the petition was dismissed.

16. Challenging the same, the defendants are before this Court.

17. Heard Mr. T.Murugamanickam, Senior Counsel appearing for M/s. Babu Rangasamy Associates for the petitioner. He would submit that the suit itself is based on the agreement dated 19.03.1992. The suit

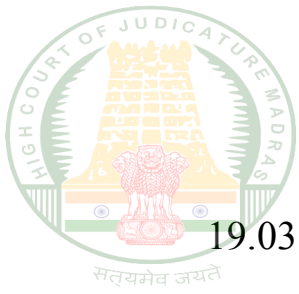


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document is an unregistered document. The plaintiff seeks a declaration only on the basis of this agreement. He would submit that the document cannot be even received since the same is unregistered and it is the plaintiff's contention that the right to the B schedule property has been conveyed only on the basis of this agreement.

18. The learned senior counsel would submit that though the plaintiff has pleaded a right on the basis of this agreement the learned Trial Judge had discussed that the plaintiff has been in possession for over 35 years and claims ownership based on the prolonged possession. He would submit that the relief cannot be granted on the basis of this unregistered document and the Court below had failed to appreciate these facts and has proceeded to dismiss the application.

19. Per contra, Mr. G.Sarath Babu, learned counsel appearing for the respondent would submit that the B schedule property has been conveyed to the plaintiff's mother under an agreement of sale dated

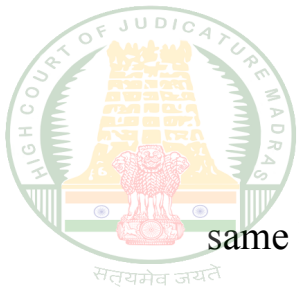


19.03.1992 and that the plaintiff's predecessor in title have been enjoying the property continuously.

20. Heard the learned counsels and perused the records.

21. The plaintiff seeks the relief of declaration that he is the absolute owner of the property. This relief is claimed on the strength of agreement dated 19.03.1992. A perusal of this agreement clearly indicates that the property has not been conveyed to the plaintiff and on the contrary the right of the original owners over the said property has been reserved and it has been stated that they will have ingress and egress through the B schedule property.

22. That being the case the relief of declaration that the plaintiff is an absolute owner of the B schedule property cannot be granted as it runs contrary to the recital in the agreement dated 19.03.1992. Further, the plaintiff claims ownership on the basis of this agreement and the



same has not been registered.

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23. The learned senior counsel for the petitioner had pointed out that the document appears to be created considering the fact that stamps have been procured from stamp vendor from Andipatti, when both parties are residents of Chennai. Further in an agreement dated 19.03.1992 it would read that the plaintiff's mother shall own and possess the portico for car parking which clearly implies a sale and the same cannot be done by an unregistered sale deed.

24. The plaintiff claims a right on the basis of this sale agreement, however, the sale agreement has not been enforced for nearly 22 years much beyond the period of 3 years, which is a limitation for specifically enforcing an agreement. Therefore, when the averments in the plaint is taken as a whole it is clear that the plaintiff will not be able to obtain a relief that he has claimed for on the ground that the agreement on which the claim is based does not give absolute right to the petitioner.



WEB COPY 25. In the Judgement relied upon by the learned senior counsel in **2020 (7) SCC 366 – Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Lrs and others**, the Hon'ble Supreme Court had observed as follows:

“The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

26. Therefore, in the light of the above, the order passed by the



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learned XX Assistant Judge, City Civil Court, Chennai, has to
necessarily be set aside and is set aside.

27. The Civil Revision Petition is allowed. Consequently, the
connected miscellaneous petition is closed. No costs.

03.04.2025

Index: Yes/No
Internet: yes/No

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To

The XX Assistant Judge,

13/15



City Civil Court,
Chennai.

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P.T. ASHA.J

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