



C.R.P.No.717 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.717 of 2025
C.M.P.No.4087 of 2025

1.Elango

2.Raja

...Petitioners

Vs

1.Kalaiselvan

2.Mani

...Respondents

PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleased to set aside the fair order and decretal order dated 08.11.2024 passed in I.A.No.266 of 2023 in O.S. No.242 of 2017 on the file of the Principal Subordinate Judge, Cuddalore.

For Petitioner : Mr.Gururaj for
Mr.D.Baskar

For Respondents : Mr.T.Saikrishnan

ORDER

The defendants 1 and 2 are the revision petitioners before this Court. They seek to challenge the order dated 08.11.2024 in I.A.No.266



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of 2023 in O.S.No.242 of 2017 in and by which their application to reopen the evidence on the side of the defendants 1 and 2 has been rejected.

2.The facts are set out briefly herein below:-

The plaintiffs had filed the suit O.S.No.242 of 2017 on the file of the Sub Court, Cuddalore, seeking declaration of their title to the suit schedule property and for recovery of possession from the defendants and also to declare the Will dated 11.01.2010 as null and void ab-initio and non-est in the eyes of law. The suit property originally belonged to one Navaneethammal from whom the plaintiffs along with Lakshmiammal had purchased the property for a valuable consideration on 25.05.1994 under a registered sale deed. From the date of the purchase they have been in possession and enjoyment of the same. Meanwhile the defendants 1 and 3 had taken away the original sale deed from the second plaintiff on 25.05.1994 constraining second plaintiff to lodge a complaint against the defendants before the Thirupapuliyur Police Station. They had instigated the plaintiff's vendor Navaneethammal to file a suit O.S.No.815 of 1996 for a bare injunction. The said suit was dismissed on 17.02.1999. Suppressing the above

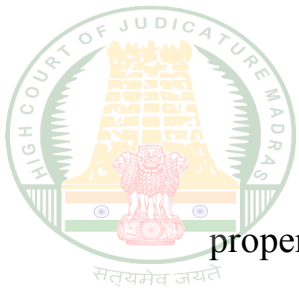


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decree Navaneethammal filed yet another suit O.S.No.339 of 2006 on the file of the learned Principal District Munsif, Cuddalore, once again for an injunction. After an elaborate trial the suit was dismissed on 30.11.2007 and the further appeal filed by Navaneethammal in A.S.No.13 of 2008 on the file of the II Additional Subordinate Court, Cuddalore was also dismissed. Thereafter, the third defendant had filed a suit O.S.No.133 of 2011 against the plaintiffs on the basis of a forged and concocted settlement deed dated 31.10.2008 which had been cancelled on 21.07.2009. The plaintiffs had filed an application under Order VII Rule 11 to reject the said plaint and the same was also rejected. Against this there was no further appeal.

3.It is further case of the plaintiffs that Navaneethammal was permitted to continue in the possession of the property till her death on 07.12.2015. After the death of Navaneethammal, Lakshmiammal and Chandra, the mother of first plaintiff were in possession of the property. Defendants 1 and 2 trespassed into the property in the first week of January 2016 and concocted and forged Will dated 11.01.2010. The plaintiffs would further submit that the criminal complaints are pending against defendants 1 and 2 as defendants are in illegal possession of the



property. Lakshmiammal had sold her 1/3rd share in favour of the first plaintiff in respect of the suit property under a registered sale deed dated 24.11.2016. The ownership of the plaintiffs has been declared by the Additional Subordinate Court, Cuddalore in A.S.No.13 of 2008. Therefore, the plaintiffs have come forward with the suit in question.

4.The first and second defendants have filed a written statement admitting the fact that the property belonged to Navaneethammal but however denying the sale of the property by Navaneethammal to Lakshmiammal. The defendants would submit that this sale deed is a concocted and a forged one. Navaneethammal had three daughters and a son. The third defendant is the son of Navaneethammal and Chandra, Lakshmi and Kasthuri are her three daughters. The second plaintiff is the husband of Kasthuri. First plaintiff and defendants 2 and 3 are the sons of Chandra. The purchase of the share of Lakshmiammal is also denied. The defendants would submit that possession of the property continued with Navaneethammal till her death and neither the plaintiffs nor Lakshmiammal have taken possession of the suit property. It is their case that Naveethammal who is in need of money had appointed her widow daughter Lakshmi as power gent vide power of attorney deed dated



21.04.2005. Since the sale of the house would have resulted in the

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Navaneethammal and Lakshmiammal being displaced from the property they had executed a simple mortgage in favour of the first defendant and borrowed a sum of Rs.1,50,000/-. Few days thereafter they allowed defendants 1 and 2 to occupied the house which they had and from May 2005 defendants have been in occupation of the suit property. They have been taking care of the needs of the Navaneethammal. Since the first defendant was taking care of Navaneethamal, Navaneethamal out of her free will and in a sound disposing state of mind had executed a Will dated 11.01.2010 bequeathing the property on the first defendant. Therefore, they sought for a dismissal of the suit.

5.After the evidence of D.W.2, the defendants 1 and 2 had come forward with the impugned application seeking to reopen evidence on their side stating that the evidence on the defendants side was all of a sudden closed without giving them an opportunity to examine more witnesses and that they have to examine witnesses to prove their case.

6.The plaintiffs had filed counter affidavit *inter alia* contending that the defendants only wanted to drag on the proceedings which is



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7.The learned Sub Judge, Cuddalore, dismissed the application stating that on 20.09.2023 after the evidence of D.W.2 defendants side evidence was closed and though the defendants had contended that on the very same day they had sought time to examine further witnesses, the request was rejected by the learned Judge. He would submit that the petition is devoid of details about the witnesses who are sought to be examined and the petition appears to be a continuation of the dilatory tactics that has been adopted by the defendants and consequently aggrieved by the said order, the defendants are before this Court.

8.Heard the learned counsels for either side and perused the records.



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9.The main grievance of the defendants is that on the very date on which D.W.2 was examined the evidence was closed without even verifying as to whether the defendants were examining any further witness. Defendants have not made any endorsement closing the evidence and the Court has suo-motu closed the evidence without even enquiring as to whether the defendants had further witnesses to be examined. They would also submit that the first witness on the side of the defendants D.W.1 was cross examined on 20.09.2023. D.W.2 was thereafter cross examined after several adjournments and on the conclusion of his cross examination evidence was closed suo-motu by the Court itself on the very same day and the matter was posted for arguments on 27.09.2023. The learned counsel for the plaintiffs on the other hand would submit that a perusal of their counter to this application would demonstrate the dilatory tactics that has been adopted by the defendants to drag on the case. The learned counsel would submit that application after application was being filed and that apart the petition is totally bereft of any details as to the witnesses that the defendants seeks to examine further.



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10. When the matter had come up on for admission on 25.02.2025,

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this Court had directed the learned counsel for the defendants to give a list of the names of witnesses that they seek to examine. The same has been given today in the form of a memo. As per the memo, the defendants seek to examine Palani, son of Muthayyan and Murugan, Advocate, Cuddalore. The main contention of the defendants 1 and 2 is that after the evidence of D.W.2 was concluded on 20.09.2023, the Court had not enquired as to whether the defendants had further evidence but has proceeded to close the evidence on its own accord. The defendant's contention is that they had not made any endorsement closing the evidence. This argument has been contested by the plaintiffs. Every party to the suit must be given sufficient opportunity to prove their case, with a caveat that proceedings are not unnecessarily dragged on. In the instant case on 20.09.2023 D.W.2 evidence was closed and the matter listed on 27.09.2023 for arguments. On that very date, the application has been filed by the defendants to reopen their evidence. Had the application been ordered on the very same date the matter would not have dragged on for a further period of over one and half years. Since the evidence has been closed by the Court without getting an endorsement from the defendants that defendants had no further evidence on their side. The



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defendants should be given an opportunity to substantiate their defence.

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In the instant case is a substantial defence. However, considering the fact that the proceedings have dragged on for so long the Civil Revision Petition is allowed with the following directions. (a) The first named witness, namely Palani, Son of Muthayyan, will be examined on 10.03.2025 and both the witnesses would be examined both in chief and cross and (b) the evidence shall be completed by 14.03.2025. The learned Principal Subordinate Judge, Cuddalore, shall dispose of the suit on or before 30.06.2025.

11.The Civil Revision Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

27.02.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
ep

Note: Issue order copy on 04.03.2025

To

The Principal Subordinate Judge, Cuddalore.



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P.T.ASHA, J,

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