



C.R.P.(PD)No.625 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :07.04.2025

Coram:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

Civil Revision Petition No.625 of 2023

and

C.M.P.No.4938 of 2023

1.G.Sampath
S/o Gnanaprakasam

2.Geetha Rani
W/o Sampath

Both are residing at
No.103, Sadyappan Street,
Saidapet, Chennai 600 015.

.....Petitioners/Defendants 1 and 2/
Petitioners

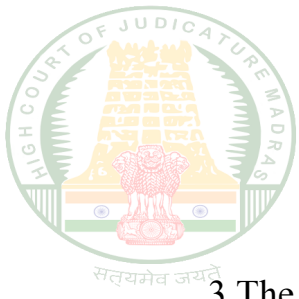
/versus/

1.K.Neelagandan,
S/o T.M.Kalyanasundaram,
No.105, Sadayappan Street,
Saidapet, Chennai 600 015.

..1st Respondent/Plaintiff/Respondents

2.S.Vignesh
S/o Sampath,
No.103, Sadyappan Street,
Saidapet, Chennai 600 015.

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3.The Tahsildar, Mambalam Taluk,
Chennai District, K.K.Nagar,
Chennai 600 078.

.. 2nd and 3rd Respondents/
Defendants 3 and 4/Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying to set aside in the fair and decretal order dated 23.01.2023 in I.A.No.5 of 2020 in O.S.No.7669 of 2019 on the file of XX Assistant City Civil Court, Chennai.

For Petitioners :Mr.R.Subramanian

For Respondents :Mr.D.Gobal, Government Advocate
for R3
R1 and R2 served-no appearance

ORDER

Challenging the dismissal of their application to strike off the plaint filed in I.A.No.5 of 2020 in O.S.No.7669 of 2019 on the file of the XX Assistant City Civil Court, Chennai, the defendants 1 and 2, who are the petitioners, have filed the present petition before this Court.

2. The brief facts, which are necessary for disposing of this Civil Revision Petition, are set out herein below:-



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The first respondent herein has filed a suit in O.S.No.7669 of 2019 seeking a relief of permanent injunction restraining the defendants 1 to 3, their men, agents and persons, from in any manner trespassing, entering, causing damages by putting up any construction including compound wall, interfering with the peaceful possession and enjoyment of the plaintiff in the suit schedule property.

3. The plaintiff's case revolves around the following facts for ease of understanding:-

The parties are referred to in the same ranking as in the above suit. The plaintiff would contend that the property comprised in T.S.No.94/1, measuring to an extent of 100 sq.ft., of land at Jamin Mambalam Village, Saidapet, which is the suit property, was a part of a larger extent of land. This larger extent of land was owned by one R.Padmavathi, who had entered into an agreement of sale with the plaintiff. Despite paying the entire sale consideration, however, she failed to execute the sale deed in



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favour of the plaintiff and therefore, the plaintiff had filed a suit in O.S.No.2582 of 2013 on the file of the V Assistant Judge, City Civil Court, Chennai, seeking specific performance of the contract. The said suit was decreed on 08.01.2014 and by virtue of the same, the plaintiff became the owner of the property.

4. He would further contend that the defendants 1 to 3 were living adjacent to the suit property and that, their property was comprised in T.S.No.92/1, however, the plaintiff's property is in S.No.94/1. He would contend that the defendants 1 to 3 are attempting to trespass into the suit property, which is a vacant land, where a small thatched shed is available. The plaintiff intended to put a compound wall around the property and with this intent, on 03.10.2019, when the plaintiff had purchased the material to construct a compound wall, the defendants 1 to 3 started to put up a compound wall and attempted to encroach into the plaintiff's property. This was stopped by the plaintiff with great effort. The plaintiff would submit that taking advantage of his absence, the defendants 1 to 3 were constantly



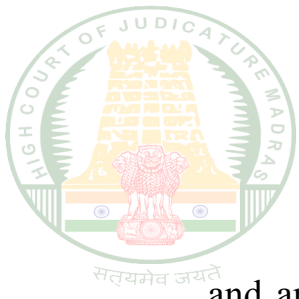
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attempting to trespass into the property by putting up a compound wall annexing a portion of the plaintiff's property.

5. The plaintiff, meanwhile, came to learn that pursuant to the judgment and decree in A.S.No.42 of 1984 passed by the V Additional Judge, City Civil Court, Chennai, S.No.92 has been subdivided as S.Nos.92/1 and 92/2. However, the 1st defendant suppressing the above judgment and decree in A.S.No.42 of 1984 has been threatening the plaintiff as under S.No.92 has not been subdivided and the defendants 1 to 3 were attempting to trespass into the property. Since the threat was continuing from the defendants 1 to 3, the plaintiff has come forward with the suit in question.

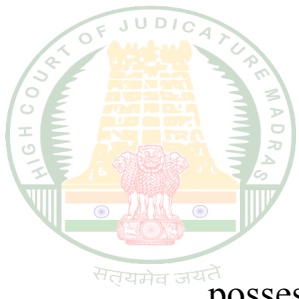
6. The defendants 1 and 2, immediately, on getting the notice in the above suit, had taken out an application to reject the pleadings in I.A.No.5 of 2020. They sought to have the plaint rejected on the ground that the present suit is nothing, but an abuse of process of the Court, an act of fraud



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and an attempt to snatch an order from the Court, by suppressing the true facts. They contended that defendants 1 and 2 along with their mother, Tmt.Pattammal, elder sister Sarala and elder brother Asokan had earlier filed a suit in O.S.No.5413 of 1989 on the file of the XV Assistant City Civil Court, Chennai, against T.M.Kalyana Sundaram, who is none other than the father of the plaintiff. This suit was filed for a declaration that the “B” schedule property measuring to an extent of 6.1 feet x 18.9 feet, exclusively belongs to them and that, the father of the plaintiff T.M.Kalyana Sundaram, was to be enjoined from interfering with the suit property and the said suit was decreed on 19.09.1996 whereby the rights of the defendants 1 and 2 and others over the 'B' schedule property were declared and an injunction was granted. They would further submit that suppressing the same, Padmavathy, the daughter of T.M.Kalyana Sundaram, and the sister of the plaintiff, had filed a suit in O.S.No.7896 of 2006 before the XVII Assistant Judge, City Civil Court, Chennai seeking permanent injunction restraining the first defendant's elder sister Sarala, elder brother Ashokan and the first defendant from trespassing, entering, disturbing the



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possession in respect of the suit schedule property in T.S.No.94/1, measuring to an extent of 609 sq.ft., at Door No.76, Old Mambalam Road, Saidapet, Chennai 600 015. This suit came to be dismissed, in the light of the judgment and decree in O.S.No.5413 of 1989 and A.S.No.18 of 1997 stating that the suit was barred by principles of *res judicata*. In the aforesaid suit i.e. O.S.No.7896 of 2006, Padmavathy had filed the settlement deed dated 23.01.2004 and the same was marked as Ex.A4. The learned XVII Assistant Judge, City Civil Court, while dismissing O.S.No.7896 of 2006 had held that a perusal of Ex.B3 would clearly show that T.M.Kalyana Sundaram, had no title to the eastern half of the suit property covered by Ex.A4. The Court also observed that the settlement deed dated 23.01.2004 was unenforceable and void. The defendants 1 and 2, therefore contended that Padmavathy, who had no title to the property, had no right to execute the agreement of sale in favour of the plaintiff and, consequently, that the decree for specific performance obtained by the plaintiff in O.S.No.2582 of 2013 was fraudulent one. The judgment and decree in O.S.No.7896 of 2006 was not taken up on appeal and had therefore attained finality.



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7. When the defendants were attempting to complete the construction up to the boundary in their property, the plaintiff has come forward with the frivolous suit. The defendants 1 and 2 would submit that they had filed Crl.O.P.No.5858 of 2017 on the file of this Court as the Police had not taken any action on their complaint and this Court by an order dated 19.07.2019 directed the defendants to give a fresh representation. Suppressing all these facts, the plaintiff has come forward with the present suit for injunction. The same therefore deserves to be rejected as it is an abuse of process of Court and suppression of material facts.

8. The plaintiff/first respondent had filed a counter wherein the plaintiff attempts to substantiate the earlier suits, but does not comment upon the suit in O.S.No.5413 of 1989. However, the learned XX Assistant City Civil Court Judge, proceeded to dismiss the application on the ground that the issue, whether the earlier suit would be a bar under the principles of *res judicata*, cannot be decided at this stage and it should be determined



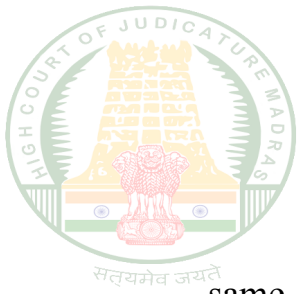
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only after trial. It is also stated that there was an abuse of process of the Court.

9. Challenging the said order, the petitioners are before this Court. Though the first respondent/plaintiff served notice, he has not chosen to participate in the proceedings.

10. A perusal of the records would indicate that with reference to the very same property, the defendants along with their siblings and mother, obtained a decree declaring their right to the said property in O.S.No.5413 of 1989, which was confirmed in A.S.No.18 of 1997 and A.S.No.34 of 1998 filed by the plaintiff was dismissed. After suffering the decree, it appears that the father of the plaintiff herein, T.K.Kalyana Sundaram, has executed a settlement deed in favour of the said Padmavathy on 23.01.2004. On the basis of the settlement, the said Padmavathy appears to have entered into the agreement of sale with the plaintiff herein and the plaintiff has obtained an exparte decree for specific performance in O.S.No.2582 of 2013. The very



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same execution of the settlement deed as well as agreement of sale is without any legal basis, since the plaintiff therein Padmavathy, had no right to the said extent. By virtue of the decree in O.S.No.5413 of 1989, the sale deed has been executed in favour of the plaintiff by a person, who had no right, title or interest to the property.

11. Therefore, the decree for specific performance, that had been obtained by the plaintiff, is not binding on the defendants 1 and 2. The plaintiff has, therefore, come to the Court by suppressing the material facts. The suit appears to be a further attempt by the plaintiff and his sister to illegal usurp the property of the defendants 1 and 2. Despite the fact that their father suffered a decree, after contest, where the title of the defendants 1 and 2, their father Asokan and his sister has been declared and the appeal filed by the said T.K.Kalyana Sundaran has also ended in dismissal, the plaintiff is still attempting to claim a right. The instant suit, therefore has to be rejected not only on the ground of abuse of process of Court and suppression of material facts, but also on the ground of locus as the plaintiff



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who has no right to the property, cannot be permitted to maintain the suit.

Therefore, **the Civil Revision Petition is allowed.** The order dated 23.01.2023 in I.A.No.5 of 2020 in O.S.No.7669 of 2019 on the file of XX Assistant City Civil Court, Chennai, is hereby set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

07.04.2025

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Index:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

To

1.XX Assistant City Civil Court, Chennai.

2.The Tahsildar, Mambalam Taluk,
Chennai District, K.K.Nagar,
Chennai 600 078.

3.The Public Prosecutor, High Court, Madras.

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