



C.R.P (PD) No.1290 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2025

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

C.R.P (PD) No. 1290 of 2025

and

C.M.P.No. 7703 of 2025

1.M.Kathirvel

2.R.Anbalagan

... Petitioners

VS.

1.C.Ambikapathi

2.K.Selvi

Rajamanickam (Died)

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the certified copy of order passed in IA.No.1 of 2019 in OS.No.479 of 2013 dated 28.01.2025, on the file of the I Additional Sub Court, Salem.

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For Petitioner : Mr. N.Selvaraj

ORDER

The above Civil Revision Petition is filed by the plaintiffs challenging the order passed in IA.No.1 of 2019 in OS.No.479 of 2013 by the I Additional Sub Judge, Salem. The facts are as follows.

2. The plaintiffs filed the above referred suit seeking the following reliefs:

“(a)For a declaration that the decree in OS.No.87 of 2006 has been obtained by fraud suppressing all the earlier litigation which are pending even today.

(b)For permanent injunction against the first defendant from getting a sale executed by the Court in pursuance of a decree in OS.No.87 of 2006 based on a fraudulent sale agreement by a person who has no title.



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(c) For a permanent injunction against the 1st defendant from interfering with the peaceful possession and enjoyment of the plaintiff.

(d) declaration that no legal right passes to the 2nd defendant either under the will or as a wife pending finality of a judgement in OS.No.976 / 2005 Salem DMC.

(e) for a declaration that the suit agreement dated 04.07.2005 is forged and therefore invalid in law.

(f) awarding the plaintiffs their costs.

3. The case of the plaintiff is that the suit properties belonged to one Shanmugasundara Konar. The said Shanmugasundara Konar was married to one Saraswathy and they had no issues. He had entered into a sale deed dated 17.10.2003 with the plaintiff and Arumugasamy son of Dharmalingam for the sale of the property. Thereafter, difference of opinion arose between the said Shanmugasundara Konar, the plaintiffs and the said Arumugasamy as a result there were several litigations



between these parties.

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4. The said Shanmugasundara Konar had filed the suit OS.No.38 of 2005 on the file of the ADM I, Salem. Pending the suit, after the trial had commenced, Shanmugasundara Konar died on 24.08.2005 after prolonged illness. Taking advantage of this ill health defendants 2 and 3 claiming themselves to be legal heirs of the Shanmugasundara Konar had created several documents.

5. The 2nd defendant had filed the suit OS.No.976 of 2005 on the file of the Additional District Munsif I, Salem claiming to be the wife of Shanmugasundara Konar. Saraswathy, his wife contested the same stating that she is only legally wedded wife of the deceased Shanmugasundara Konar. Even prior to the suit OS.No.976 of 2005 the plaintiff had got the sale deed executed on 21.09.2007 and were put in possession of the same.



WEB COPY 6. The 2nd defendant meanwhile started selling the properties.

While Shanmugasundara Konar, who was in an advanced stage of cancer and was in unconscious state she had created the Will which is clearly a fabricated one. On the strength of this Will, the alienations have taken place and the 2nd defendant had executed a sale agreement in favour of one V.Chandra. The said Chandra inturn has assigned the right to get specific performance in favour of the 1st defendant on 10.07.2006 and the 1st defendant appears to have filed a suit for specific performance against the defendants 2 and 3 and has obtained a collusive decree. Therefore, the plaintiffs have come forward with the suit in question.

7. The 1st defendant had filed a written statement denying the allegations made in the plaint and stated that he is a bonafide purchaser of the property apart from setting out other defenses.



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8. Pending the above suit, the plaintiff filed IA.No.1 of 2019 under Section 10 Read with Section 151 of CPC to stay the above suit only until the earlier suit OS.No.382 of 2018 (Old No. OS.No.976 of 2005) pending on the file of the District Munsif, Valappadi is disposed of.

9. The suit OS.No.976 of 2005 is a suit filed by the defendants 2 seeking a declaration that she is the legally wedded wife of Shanmugasundara Konar and also declaring title of the plaintiff's title to the A schedule property and consequently restrain the defendants therein from in any manner interfering with her peaceful possession and enjoyment of the property. The plaintiffs herein have been arrayed as defendants 2 and 4 therein.



10. Since the learned Trial Judge had directed the parties to commence trial in the earlier matter, the present Civil Revision Petition has been filed.

11. In the revision, there was a stay of the proceedings in OS.No.479 of 2013 in view of the pendency of the earlier suit OS.No.382 of 2018 by order dated 28.01.2025. The learned Trial Judge had observed that the case has been stayed only due to pendency of the Section 10 application. However, the learned Trial Judge taking note of the long pendency of the case directed the parties to commence trial on 17.02.2025.

12. Heard the learned counsels for the petitioners.

13. From a perusal of the reliefs claimed in the two suits namely OS.No.976 of 2005 new No.382 of 2018 as also OS.No.479 of 2013 it is clear that the two suits are independent of each other and not only



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parties are different but the relief claimed is also different. However, it would be in the interest of parties to have both the suits tried jointly.

14. The learned Trial Judge has rightly directed the trial and not stayed the suit. I see no reason to interfere with the said order.

15. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

15.04.2025

Index: Yes/No

Internet: yes/No

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To

1.The I Additional Sub Court,
Salem.



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