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C.R.P.(PD) No.1275 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD) No.1275 of 2025
and CMP.No.7624 of 2025

1.P.Subbaiyan
2.S.Kamalakaran

... Petitioners

Vs.

1.P.C.Ramasamy
2.S.Nandhini
3P.Raghupathi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated made in I.A.No.09 of 2024 in O.S.No.115 of 2024, dated 11.12.2024 on the file of the learned Subordinate Judge, Kodumudi by allowing this Civil Revision Petition.

For Petitioners : Mr.M.Guruprasad

For Respondents : Mr.A.Sundaravadhanan



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ORDER

Challenging the dismissal of their application to examine the first defendant as a witness on their side, the plaintiffs are before this Court as revision petitioners. The defendants 1 to 3 are the respondents herein.

2. The plaintiffs had originally filed a suit in O.S.No.727 of 2021 on the file of Sub Court, Erode, for the following reliefs :

- a. to declare that the sale deed dated 05.09.2017 executed by the first defendant in favour of the second defendant in respect of the 4th item of suit property as null and void;
- b. to declare that the gift settlement deed dated 10.12.2020 executed by the second defendant in favour of the third defendant in respect of the 4th item of suit property as null and void;
- c. to restrain the defendants 2 and 3, their men, agents etc., from trespassing into items 1 to 3 of the suit properties and causing damages to it; and
- d. for appointing a Commissioner to measure Item Nos. 1 to 3 and 4th item with the help of a surveyor, and with the help of title documents



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and thereafter, to fix the boundary lines by means of mandatory injunction.

3. The brief facts are set out as below :

- a. The first plaintiff is the father of the second plaintiff. The second defendant is the wife of the third defendant and the first defendant is the vendor of the second defendant.
- b. It is the case of the revision petitioners/plaintiffs that one K.P.Krishnasamy Gounder possessed certain extent of properties in Kodumudi Village by virtue of registered sale deeds dated 19.01.1974 and 25.01.1974 respectively. The first plaintiff, on 05.11.1982 had purchased an extent of 0.57 acres of land comprised in S.F.No.378/A1 from K.P.Krishnasamy Gounder. Thereafter, on 26.11.1982, the first plaintiff had purchased another extent of 0.56 acres of land in S.F.No.378/A1 from the said Krishnasamy Gounder. These properties are morefully described as Item No.1 and Item No.2 of suit schedule properties. From the date of purchase, the first plaintiff and his family members are in joint possession



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and enjoyment of the properties. Be that as it may, on 08.09.2007, the first plaintiff had executed a registered settlement deed in favour of his son, the second plaintiff, to an extent of 0.40 acres in S.F.No.261/2. This property is described as Item No.3 in the suit schedule.

- c. In the meanwhile, the first defendant/first respondent had executed a registered sale deed dated 05.09.2017 in favour of the second defendant/second respondent for an extent of 0.19 1/4 acres in S.F.No.261/1. The property covered under this sale deed is described as the 4th item in the suit schedule. Thereafter, the second defendant/second respondent had executed a gift settlement deed on 10.12.2010 in favour of her husband, the third defendant/third respondent in respect of the Item No.4 of the suit property.
- d. It is the case of the plaintiffs that the first defendant did not have any right whatsoever to execute a sale deed dated 05.09.2017 in favour of the second defendant, and therefore, the second defendant cannot convey the title to the third respondent through the gift settlement deed.



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4. It is the further contention of the plaintiffs that the sale deed executed by the first defendant in favour of the second defendant was on the strength of the revenue records, whereas in the sale deed dated 05.09.2017, it has been stated that the first defendant had acquired the property by virtue of a registered sale deed dated 11.10.2011. According to the plaintiffs, based on the revenue records, the description of property shown in the sale deed and subsequent gift deed are wrong and misleading. Therefore, the plaintiffs have filed the suit in question.

5. The written statement came to be filed by the third defendant, disputing the claim of the plaintiffs, and the same was adopted by the second defendant. The defendants did not admit the sale deeds dated 19.01.1974 and 25.01.1974 which were executed in favour of Krishnasamy Gounder, the vendor of the first plaintiff. The sale deeds dated 05.11.1982 and 26.11.1982 executed in favour of the first plaintiff was also disputed. The defendants would submit that the plaintiffs at no point of time had enjoyed the suit properties. It is their contention that the said Krishnasamy Gounder was entitled to only one acre of land and hence, he could have



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conveyed only an extent of 1 acre which he possessed and nothing more, whereas, under the alleged sale deeds dated 05.11.1982, and 26.11.1982, Krishnasamy Gounder was stated to have conveyed 0.57 acres and 0.56 acres respectively, and as a result, he had conveyed 13 cents of land in excess. Therefore, the defendants would submit that the plaintiff cannot stake a claim to an extent of 1.13 acres. On the other hand, it is the case of the third defendant that he is entitled to an extent of 91^{1/4} cents in R.S.No.261/1 and he has traced his title to the same. The defendants have also questioned the right of the plaintiffs and would also submit that he had filed a suit in O.S.No.551 of 2022 against the plaintiffs for declaration in respect of 10.89 cents and for delivery and possession of the same. This defendant would also submit that the plaintiffs are total strangers to the lands comprised in R.S.No.261/1.

6. Pending trial in the present suit, the plaintiffs has come forward with the impugned application in I.A.No.9 of 2024, *inter alia* seeking to examine the first defendant on the ground that he is the vendor of defendants 2 and 3, who is aware of the suit property, and that he would speak about the title and enjoyment of the properties.



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7. This application was resisted by the by the defendants, *inter alia* contending that there was no necessity to examine the first defendant, as the third defendant feared that the first defendant would be manouvered by the plaintiffs, particularly when P.W.1 has admitted that he had meeting with the first defendant every now and then, when he was being examined. That apart, Order XVI Rule 14 would contemplate examining the parties/defendants as witnesses on the side of the plaintiffs.

8. The learned Subordinate Judge, Kodumudi, after hearing the parties, dismissed the said application and as against the said order, the plaintiffs/revision petitioners are before this Court.

9. Heard the learned counsel for either side.

10. The plaintiffs have come to Court stating that the first plaintiff had purchased a specific extent of land under certain sale deeds. He claims right over the properties under these documents. The documents have described the property therein with the measurements as well as boundaries.



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That apart, the plaintiffs have sought to examine the first defendant only for the purpose of "speaking about the title and enjoyment of the property".

Therefore, the first plaintiff's title to the suit property can be explained through the above documents and with reference to possession, the petitioners have to prove the same independently.

11. In view of the above observation, I see no reason to differ from stand taken by the learned Subordinate Judge, Kodumudi in the impugned order passed in I.A. No.9 of 2024 in O.S.No.115 of 2024, dated 11.12.2024. Accordingly, the present civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes / No
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To:
1.The Subordinate Judge, Kodumudi.

2.The Section Officer
VR Section, High Court, Madras.



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P.T. ASHA, J.

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