



C.R..P.(PD)(MD).No.1020 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.1020 of 2025

and

C.M.P(MD) No.5514 of 2025

K.Mathan Raja

... Petitioner/Petitioner/
Defendant

Vs.

R.Shivani

... Respondent/Respondent/
Plaintiff

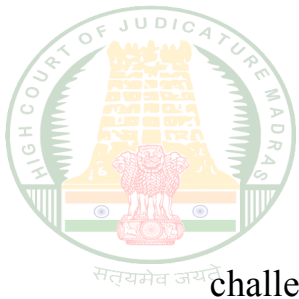
PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 20.02.2025 passed in I.A.No.6 of 2023 in O.S.No.108 of 2020 on the file of learned I Additional District Munsif Court, Nagercoil.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.H.Lakshmi Shankar

ORDER

The defendant in O.S.No.108 of 2020 on the file of the I Additional District Munsif Court, Nagercoil, has filed the present Civil Revision Petition



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challenging the dismissal of his application filed under Order 7 Rule 11 of C.P.C r/w 7, 12 (2), 37 and 37(2) of Tamil Nadu Court Fees and Suits Valuations Act 14 of 1955.

2. A perusal of the records reveal that the above said suit has been filed for the relief of mandatory injunction to hand over possession of the suit schedule properties to the plaintiff. A perusal of the plaint averments reveal that the plaintiff is the sister's daughter of the defendant. The suit property originally belonged to one V.Krishnan, who had died leaving behind his son K.Mathan Raja (defendant) and daughter Parvathy. Parvathy's daughter is Shivani, who is the plaintiff in the present suit. According to the plaintiff, Mr.V.Krishnan has executed a Will in her favour on 27.05.2005 and he passed away in the year 2014. Therefore, she is the absolute owner of the property.

3. The plaintiff has further claimed that the defendant in the suit who is her maternal uncle was permitted to be in occupation of the suit schedule properties. When she was asked to vacate, he has refused to vacate. Hence, the present suit.



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4. The defendant has filed a written statement disputing the genuineness and validity of the Will dated 27.05.2005 and has further contended that the Will was executed under undue influence and coercion. When the suit was posted for cross examination of P.W.1, the plaintiff has filed the present application in I.A.No.6 of 2023 seeking to reject the plaint. The main contention in the said application is that the title of the plaintiff has been specifically disputed in the written statement and unless the plaintiff proves the Will and establishes the title over the suit schedule properties, the suit for mandatory injunction would not be maintainable. The suit should have been laid either for recovery of possession or the prayer should have been sought for declaration of title.

5. The trial Court after considering the submissions made on either side has proceeded to dismiss the said application on the ground that the character of possession of the defendant is in dispute. In such circumstances, the said character could be decided only after trial. Challenging the same, the present Civil Revision petition has been filed.

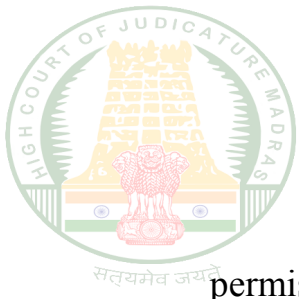


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6. According to the learned counsel appearing for the revision petitioner, the plaintiff is attempting to prove the Will and get the title declared for the suit schedule properties in a suit for mandatory injunction. When the title is specifically disputed, the first prayer should be for declaration of title, and without the same the plaintiff cannot seek a prayer for mandatory injunction. The learned counsel appearing for the revision petitioner has relied upon the judgment of the Hon'ble Supreme Court reported in **(2008) 4 SCC 594 (Anathula Sudhakar Vs.P.Buchi Reddy (Dead) by LRS and others)** and contended that when a cloud has been created over the title of the plaintiff, the suit for bare injunction is not maintainable without a prayer for declaration of title. The learned counsel has also relied upon the decision of this Court reported in **2024 2- LW.740 (Palani (dead) and others Vs.Ramadoss @ Seenu and another)**, wherein this Court has held that even if the prayer for relief of recovery of possession is couched as a relief of mandatory injunction, the Court fee has to be paid accordingly.

7. Per contra, the learned counsel appearing for the respondent/plaintiff had contended that it is the specific case, that the defendant in the suit is a



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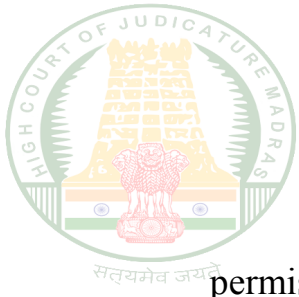
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permissive occupant. Immediately after the death of Mr.V.Krishnan, all the revenue records have been mutated. Even during mutation, the only defence on the side of defendant was that the Will was executed under undue coercion. In such circumstances, there is no cloud over the title of the property and therefore, the present suit is maintainable.

8. Heard both sides and perused the materials available on record.

9. The plaintiff has specifically pleaded that the possession of the defendant is that of a permissible occupant. According to the plaintiff, she is the absolute owner of the property based upon the Will said to have been executed by the grandfather on 27.05.2005. The defendant, who is the maternal uncle of the plaintiff is specifically disputing the Will and claims that his possession is that of a co-owner. The defendant has also claimed title to the suit schedule properties by way of adverse possession.

10. The above said averments would clearly indicate that there is a serious dispute with regard to the character of possession of the defendant. Whether the defendant is in possession as that of a co-owner or as that of a



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permissive occupant of the plaintiff can be decided only after trial. In case, if the Court arrives at a finding that the defendant is in possession as a permissive occupant, then the plaintiff would be entitled to a decree. On the other hand, the Court arrives at a finding that the Will has not been proved and the possession of the defendant is that of the co-owner, then the suit has to be dismissed. In such circumstances, without conducting a trial, the issues raised by the defendant in the application filed under Order 7 Rule 11 of C.P.C cannot be decided at this moment. Leaving the said issues open to be raised to the trial, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

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NCC : Yes/No
Index : Yes / No
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1. The I Additional District Munsif Court,
Nagercoil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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