



C.R.P.(PD)(MD).No.1513 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.1513 of 2021
and
C.M.P.(MD)No.8311 of 2021

P.Innisai Anthony Raj

... Petitioner

Vs.

1.U.Nagaraj
2.N.Murugalakshmi

... Respondents

PRAYER: Civil Revision Petition - filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 19.02.2021 in I.A.No.146 of 2019 in O.S.No.61 of 2019 passed by the District Munsif cum Judicial Magistrate, Athoor, Dindigul District.

For Petitioner : Mr.A.Aruljenifer

For R1 & R2 : Mr.A.Balan
for Mr.S.Anandhakumar



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ORDER

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This Civil Revision Petition is filed challenging the fair and decreetal order dated 19.02.2021 in I.A.No.146 of 2019 in O.S.No.61 of 2019 on the file of the District Munsif cum Judicial Magistrate, Athoor, Dindigul District.

2.The learned counsel for the petitioner would submit that the petitioner /plaintiff filed a suit for permanent injunction in O.S.No.61 of 2019 as against the respondents/defendants. The petitioner averred that the entire suit schedule property was purchased by the petitioner from one James Mary on 08.01.1999. Immediately after purchase, he constructed a RCC house leaving the eastern side of the property as vacant site and enjoying the eastern side of the property by laying water connection.

3.While so, the respondents tried to encroach the eastern side of the property. Thereby, the petitioner filed a suit for permanent injunction as against the respondents. The respondents also filed a written statement under Order 8 Rule 1 of CPC on 13.03.2017 stating that the



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respondents purchased the adjacent property of the petitioner on 13.10.2016 from one Rajalakshmi wife of Kasirajan. Further, it is averred in the written statement that the petitioner obtained patta to the larger extent more than the sale deed in his favour and a proceedings for cancellation of patta is pending before the District Collector. Since the petitioner tried to encroach the defendants' property, the defendants made a complaint before the Law Enforcing Agency, pursuant to which the present suit is filed. Further, the respondents filed an Interlocutory Application seeking to file additional written statement with a counter claim and the same was allowed by the trial Court. Challenging the same, the present Civil Revision Petition is filed.

4.The learned counsel for the petitioner submits that the petitioner filed a suit for permanent injunction. The defendants made a counter claim to declare the sale deed stands in the name of the petitioner as null and void. The petitioner submits that the counter claim cannot be made beyond the relief sought in the original suit. Further, the petitioner's sale deed is of the year 1999. Whereas, the counter claim is made in the year 2019. Nearly after a decade, the counter claim was made. Even then,



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without any reasonings, the counter claim was allowed by the trial Court and the same is not sustainable. However, the learned counsel for the petitioner fairly submits that the petitioner has no grievance for receiving additional written statement in terms of under Order 8 Rule 1 of CPC, since receiving of additional written statement is the discretion of the Court.

5.The learned counsel for the respondents submits that admittedly, the suit was filed in the year 2017 and the written statement was also filed in the year 2017. Thereafter, the respondents came to know that the petitioner obtained patta for larger extent other than the extent mentioned in the sale deed executed in his favour. The respondents have taken steps to rectify the said defect before the Revenue Authorities by filing an appeal for UDR correction. In view of the contradictory extents mentioned in the sale deed and the patta, the respondents filed a counter claim for declaring the sale deed as null and void.

6.The learned counsel for the respondents further submits that after filing of the written statement, counter claim can be made along with the



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additional written statement. In respect of his submission, he relied upon a decision of the Hon'ble Supreme Court in the case of ***Ashok Kumar Kalara vs. Wing CDR.Surendra Agnihotri and others [(2020) 2 SCC 394]***.

7.Heard the learned counsel appearing on either side and perused the materials placed on record.

8.Admittedly, the petitioner made averments in the plaint in the suit in O.S.No.61 of 2017 as if he purchased property from one James Mary on 18.01.1999 and constructed RCC house in the western side of the property and left the eastern side of the property as vacant site. He further claimed that he is paying house tax and other taxes. While so, on 05.02.2017, the defendants entered into the suit property and tried to interfere with the petitioner. Thereby, the petitioner filed a suit for permanent injunction. The respondents also filed written statement on 13.03.2017 alleging that the revenue authorities granted patta to the petitioner for larger extent than the actual extent of property purchased by the petitioner vide sale deed stands in his favour.



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9. In catena of decisions, it is held that the revenue patta is not title and on the basis of patta, one cannot confer title independently. The title has to be proved before the trial Court by deed of conveyance.

10. As far as the claim regarding counter claim is concerned, in the present case, the suit was filed in the year 2017 and the written statement was also filed in the year 2017. Subsequently, in the year 2019, the respondents filed an application for receiving additional written statement under Order 8 Rule 1 along with Counter claim for declaring the sale deed executed in favour of the petitioner by one James Mary in the year 2016 as null and void. Without any specific discussions, the trial Court has allowed the said application. The said order is non est in law. If at all the respondents are aggrieved by the sale deed executed in favour of the petitioner, it is for them to file a separate suit. The counter claim of declaratory relief made by the respondents in the suit for permanent injunction filed by the petitioner is not permissible.



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11.In view of the above deliberations, the order of the trial Court is set aside with regard to the counter claim alone. However, the additional written statement shall be received by the trial Court. The petitioner is also permitted to adduce evidence with regard to the additional written statement filed by the respondents.

12.Accordingly, this Civil Revision Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

- 1.The District Munsif cum Judicial Magistrate,
Aathoor, Dindigul District.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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M.DHANDAPANI,J.

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