

(2009) 03 MAD CK 0056

In the Madras High Court

Case No : C.R.P. (PD) No. 2734 of 2008 and M.P. No. 1 of 2008

Chinnamoorthy Ammal

APPELLANT

Vs

Janakiraman, Ramu @ Kothandaraman and Selvi

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Constitution of India, 1950 — Article 227

Citation : (2009) 03 MAD CK 0056

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : N. Suresh, for the Appellant; A. Tamilvanan, for R 1 to R 3, for the Respondent

Judgement

M. Venugopal, J.—The Civil Revision Petitioner/appellant/petitioner/plaintiff has filed this revision petition as against the Judgment dated

24.06.2008 in C.M.A. 5/07 passed by the learned Principal Sub Judge, Tindivanam in affirming the order dated 26.09.2007 in I.A.347/07 in O.S.

58/07 passed by the learned District Munsif cum Judicial Magistrate, Vanur.

2. The First Appellate Authority in the Judgment passed in C.M.A. 5/07 dated 24.06.2008 has inter alia observed that whether the revision

petitioner is in enjoyment of the suit property after purchasing the same from Rajamani etc., or whether the respondents are in possession and

enjoyment of the suit property not only through oral partition of the first respondent's father Kannaiya Gounder and by means of sale deed are all

matters to be determined only during the trial of the case through oral and documentary evidence adduced by witnesses, etc., and resultantly,

dismissed the Civil Miscellaneous Appeal without costs, thereby affirming the

order of the trial Court passed in I.A. 347/07 in O.S. 58/07 dated 26.09.2007.

3. The trial Court while passing orders in I.A. 347/07 in O.S. 58/07 on 26.09.2007 has among other things observed that the revision petitioner/petitioner/plaintiff has no right in the petition property as per Ex.P1 sale deed dated 31.01.2002 and consequently declined the relief of interim injunction and dismissed the application without costs.

4. According to the learned Counsel for the revision petitioner/plaintiff, the Courts below should have held that the revision petitioner is entitled to get the relief of interim injunction as prayed for in the application and further that both the Courts should have seen that the revision petitioner alone is in possession and enjoyment of the property as per title deeds and revenue records and further the prima facie case balance of convenience are in favour of the revision petitioner and that the trial Court and the First Appellate Authority ought to have considered Exs.P1 to P3 and Exs.P8 to P10 projected on the side of the revision petitioner and further the patta document has not been taken into account and therefore prays for allowing the Civil Revision Petition to prevent miscarriage of justice.

5. Per contra, the learned Counsel for the respondents 1 to 3 submits that it is not correct to state that the petition mentioned property belongs to

Rajamani as per the sale deed dated 26.02.2001 and further it is not correct to state that the petition mentioned property and some other

properties have been allotted to Felix Gaberial Marg and for him, one Dharmaraj as guardian maintained the petition mentioned properties and

moreover, it is not true to say that the properties have been enjoyed by the said Rajamani, who in turn executed the settlement deed dated

13.01.2003 in favour of Varalakshmi and added further, it is not true to state that the said Rajamani has purchased 3 acres and 94 cents out of

which he executed a settlement deed in favour of Varalakshmi in respect of 1 acre and 97 cents and the balance of 1 acre and 97 cents he sold it

to the revision petitioner on 31.01.2002 and it is true that the petition mentioned property belongs to Kothandarama Gounder as per the sale deed

dated 24.01.1961 and that on 21.04.1959 when the Bhogia loan executed by Mariam Beevi has been pending, Kothandarama Gounder

purchased the same and that the said Kothandaraman has asked his son-in-law

Kannaiya Gounder's sons Sundaramoorthy, Janakiraman, Ramu

@ Kothandaraman to wipe off the said loan and immediately Kothandarama Gounder accepted the parties and only on that basis, the said

Bhogiyam has been wiped out by the said Kothandarama Gounder on 30.03.1961 and accepted the properties and thereafter with the consent of

Kothandaraman Patta No. 651 has been obtained in the name of Sundaramoorthy and the aforesaid sons of Kothandarama Gounder have jointly enjoyed all the properties along with Kothandarama Gounder and the said Kothandaraman expired in 1968 and his issues are 1) Kalivaratha

Perumal (only son) 2) daughters Soodamani, Veerammal, Janagam, Dhanalakshmi, Kizhiambal @ Puliyampattu Ammal, Jayakantham and after the death of Kothandaraman apart from the petition property in respect of other properties the said Kalivaratha Perumal has been enjoying the same

after changing the patta and that Kalivaratha Perumal and Kothandarama Gounder and his sons have enjoyed the property without any objection

whatsoever and later Kalivaratha Perumal has sold the other properties to Kothandarama Gounder on 09.05.1984 to which act the daughters of

Kothandarama Gounder have not raised objection and that they have executed a release deed in favour of the said Kothandaraman on

21.06.1981 and that Soodamani and Jayakantham have orally released their rights and therefore the father of the respondent Kothandarama

Gounder and the respondent's brothers Sundaramoorthy, Ramu @ Kothandaraman have acquired the right in the said properties as per law and

no one has got any right or enjoyment after the year 1961 and that the Partition Arrangement dated 03.01.2000 is not legally valid and fabricated

one and never at any point of time, the 3 acre and 94 cents have been in enjoyment in the hands of Kalivaratha Perumal and further either

Dharmaraj or anyone has enjoyed the same and further never at any point of time, the petition mentioned property belonged to Felix Gaberial

Marg and Dharmaraj has created false records and filed a petition before the District Court, Villipuram with false averments and obtained an order

and created a fabricated false sale deed and that even for a single day, the said Rajamani has not enjoyed the petition mentioned property and that

the sale deed executed by Rajamani in favour of the petitioner is a fabricated one and therefore the revision petitioner cannot claim any right in the

petition mentioned property and further that the revision petitioner has not enjoyed the petition mentioned property and likewise the sale deed

executed by Dharmaraj in favour of Chinnamoorthy Ammal is a fabricated one and therefore prays for dismissal of the revision petition.

6. Countering the submissions of the learned Counsel for the respondents, the learned Counsel for the revision petitioner contends that the revision

petitioner/Plaintiff has filed the suit for the relief of declaration of her title and for the relief of permanent injunction and that the revision petitioner is

in possession and enjoyment of the property and that Mariyam Beevi has sold the property in favour of Kothandarama Gounder on 24.02.1961

for valuable consideration and after the death of Kothandarama Gounder his wife, daughters and son have enjoyed the suit property and other

properties and that Kothandarama Gounder has one son and that the daughters of Kothandarama Gounder have been married long back and they

are living separately and that the respondents 1 and 2 are the sons and Puliampattu Ammal, Dhanalakshmi, Veerammal, Chinnaponnu @ Janagam

have executed a release deed in favour of Kalivaratha Perumal on 21.06.1981 by means of general release deed and as per the release deed, the

executants have relinquished their right for proper and valid consideration and hence, the four daughters of Kothandarama Gounder have no right

over the suit property and other properties and after the release deed, Kalivaratha Perumal is entitled to get share of the executants and that

Jayakantham, daughter of Kothandarama Gounder has filed a suit O.S. 214/1998 on the file of the Additional Sub Judge, Pondicherry for the relief

of partition of 1/8th share in the family properties and the suit property is the 12th item in O.S.214/1998 and a preliminary decree has been passed

in favour of the said Jayakantham for 1/8th share and after the preliminary decree, the parties have entered into a compromise on 03.01.2000 and

as per the compromise, a division has taken place and that the suit property has been allotted to the share of Felix Gabriel Marg (minor) S/o

Kalivaratha Perumal and that Kaliavaradha Perumal is entitled to get the entire extent of 3.94 cents of the suit property and that the said

Kaliavaradha Perumal died in the year 1977 leaving his only son Felix Gabriel Marg, Kaliavaradha Perumal's wife Devasana who also died at the

same time and Felix Gabriel Marg's grandfather Dharmaraj has been the guardian to the minor and that he has been in possession and enjoyment

of the property in the capacity of the guardian and since the guardian unable to look after the property has filed O.P. 21/00 seeking permission to sell the property of the minor Felix Gabriel Marg and the District Judge, Villipuram has granted permission on 12.01.2000 to sell the property of the minor by the guardian Dharmaraj and the said Dharmaraj sold the entire extent of the suit property in favour of Rajamani on 26.02.2001 as per the Registration sale deed, which has been executed for a proper and valid consideration and the said Rajamani has executed the registration sale deed in favour of the revision petitioner on 31.01.2002 and that the said sale deed is a true one and therefore prays for allowing the civil revision petition in the interest of justice.

7. A perusal of the plaint in O.S. 58/07 filed by the revision petitioner/plaintiff indicates that the revision petitioner has sought the relief of declaration of title to the suit property in her favour and also the relief of permanent injunction restraining the defendants etc., in any manner interfering with the peaceful possession and enjoyment of the suit property.

8. The learned Counsel for the respondents submits that the suit is not maintainable and that Ex.P5 sale deed dated 24.02.1961 is not in accordance with the order passed in Guardian O.P. 21/2000 dated 12.01.2001 viz., Ex.P8 and in respect of the same property a declaratory decree has been obtained and that the revision petitioner has to approach the Executing Court under Order 21 of the CPC to prove his title and Ex.R28 is the declaratory decree obtained in O.S.39/2004 dated 12.01.2005 and Exs.R8 to R23 are kist receipts and Exs.R24 and R25 are chittas and Ex.R26 is adangal and therefore the respondents have proved possession in the present case on hand and therefore the civil revision petition has to be dismissed in furtherance of substantial cause of justice.

9. However, the learned Counsel for the revision petitioner refers to Ex.P1 sale deed dated 31.01.2002 in favour of the revision petitioner is executed by Rajamani, Ex.P2 patta No. 651 in the name of the revision petitioner, Ex.P3 the Kist receipt dated 17.05.2007 in favour of the revision petitioner for patta No. 651 for Fasli No. 1416. Ex.P8 dated 12.01.2001 order passed in G.O.P.21/2000 by the Principal District Judge, Villipuram, Ex.P9 sale deed dated 26.01.2001 executed by Dharmaraj in favour of Rajamani and Ex.P10 order dated 22.06.1998 passed in

G.O.P. 7/98 and contends that the revision petitioner has made out a prima facie case in her favour apart from the balance of convenience and

therefore prays for allowing the civil revision petition.

10. The learned Counsel for the revision petitioner cites the decision M. Gurudas and Others Vs. Rasaranjan and Others, wherein the Honourable

Supreme Court has held that "finding on "prima facie case" would be a finding of fact and that the Court not only must arrive at a conclusion that a

case for trial has been made out but would consider question in regard to balance of convenience of parties as also irreparable injury which might

be suffered by plaintiffs if prayer for injunction is to be refused, etc.,". He also relies on the decision Surya Dev Rai Vs. Ram Chander Rai and

Others, , whereby the Honourable Supreme Court has observed that "Interlocutory orders passed by Courts subordinate to High Court are open

to challenge in and continue to be subject to certiorari and supervisory jurisdiction of High Court." He also draws the attention of this Court to the

decision Chokkaiya Chettiar and Ors. v. T. Sivakumaran and Anr. (2004) 3 M.L.J. 342 wherein this Court has held that " the High Court can

interfere with the orders passed by the Court below under Article 227 of the Constitution, etc.,".

11. At this juncture, this Court points out that an interim relief which amounts to final relief will not be granted except where situation of the case

warrants for which the Court ought to record reasons. It is an axiomatic fact that a prima facie case not to be confused with prima facie title which

has to be necessarily established on evidence during trial.

12. It is needless to point out that the person seeking the relief of temporary injunction a) must satisfy that there is senior question to be tried in suit

to dispel the cloud of doubt in regard to his entitlement b) Court's interference is essential to protect her from irreparable injury and c) the balance

of convenience is in her favour. Moreover, the relief of temporary injunction can be granted only if the individual seeking the same has a concluded

right capable of being enforced by way of injunction, in the considered opinion of this Court. Continuing further, Order 39, Rule 1 of the CPC is

wholly equitable in nature, and that the application must show that he is not at all fault.

13. A perusal of the order dated 26.09.2007 in I.A. 347/07 in O.S. 58/07

indicates that the trial Court has inter alia observed that the sale executed by Dhanalakshmi in favour of Rajamani viz., Ex.P9 dated 26.02.2001 is contrary to the order passed in Ex.P8 O.P. order dated 12.01.2001 and hence the said sale obtained by Rajamani is not valid as per law. Resultantly, it has not executed the claim of the revision petitioner that the petition mentioned property belongs to her as per Ex.P1 sale deed dated 31.01.2002. Further, a perusal of the Judgment passed in C.M.A. 5/07 dated 24.06.2008 by the First Appellate Court shows inter alia that whether the revision petitioner has purchased the suit property from Rajamani and enjoying the same is true or whether the respondents are in possession and enjoyment of the suit property by means of sale deed and as per the oral allotment of share given to Kothandarama Gounder (R1's father) are all matters to be gone into at the time of trial of the case through oral and documentary evidence and therefore it has directed the trial Court to take up the main case for disposal and to pass orders accordingly and consequently dismissed the appeal, thereby confirming the order of dismissal of the I.A.347/07 passed by the trial Court.

14. Be that as it may, on a careful consideration of respective contentions and in view of the divergent stand taken by the respective parties which are a mixed question of Fact and Law to be established by means of oral and documentary evidence, besides raising arguable issues this Court without going into the merits of the controversy of the matter directs the trial Court viz., the District Munsif cum Judicial Magistrate, Vanur to dispose of the main suit O.S. No. 58/07 within a period of four months from the date of receipt of a copy of this order in accordance with well settled principles of law and to report compliance to this Court. Liberty is given to the parties to raise all the factual and legal contentions before the trial Court and the trial Court is directed to dispose of the suit in accordance with law.

15. Accordingly, the civil revision petition is disposed of in the above terms, leaving the parties to bear their own costs. The connected miscellaneous petition is closed.