

Malliga Vs. Ranganathan

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Court : Chennai

Decided On : Feb-18-2014

Judge : P.R.Shivakumar

Appellant : Malliga

Respondent : Ranganathan

Advocate for Pet/Ap. : Mr. A.Rajendra Kumar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

18. 02.2014 CORAM THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR
C.R.P (NPD) No.4356 of 2011 Malliga ... Petitioner vs.

1. Ranganathan 2.Chandra Ammal ... Respondents Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 18.02.2011 rendered by the learned District Munsif-cum-Judicial Magistrate, Arcot, Vellore District made in E.A.No.101 of 2005 in E.P.No.14 of 2005 in O.S.No.123 of 1996. For Petitioner : Mr.A.Rajendra Kumar For Respondents : Mr.S.Ramesh Kumar Senior Counsel for Mr.Ranganathan

ORDER

Notice before admission was given to the respondents and the respondents are also represented by a counsel.

2. The arguments advanced by Mr. A.Rajendra Kumar, learned counsel for the petitioner and by Mr.S.Ramesh Kumar, learned senior counsel arguing on behalf of the learned counsel for the respondents are heard. The impugned order, grounds of revision and the other materials produced in the form of typed-set of papers are also perused.

3. The revision petitioner is a third party obstructor in E.P.No.14 of 2005 in O.S.No.123 of 1996. The respondents herein initially filed the above said suit on the file of the District Munsif-cum-Judicial Magistrate, Arcot against Karthigeyan and 6 others for declaration of their title in respect of the suit properties consisting of three items of properties and for permanent injunction. Later on alleging disposition in respect of the properties, the plaint was amended with the permission of the Court seeking recovery of possession in addition to the relief of declaration.

4. After trial, the suit was decreed and the reliefs sought for were granted by the judgment and decree dated 18.11.2002. The said decree was sought to be executed by filing E.P.No.14 of 2005. When delivery was ordered, the present revision petitioner raised objection stating that items 1 and 3 of the suit properties belonged to her by virtue of an assignment made by the Government in the year 1989. Besides raising such an objection, the revision petitioner filed an application as E.A.No.101 of 2005 in the above said Execution Petition under Order XXI Rule 97 CPC for adjudication of her claim. The learned Executing Judge, after hearing, rendered a finding that the revision petitioner/obstructor did not prove her claim and on the other hand, the first respondent herein/the decree holder No.1 was able to disprove the claim of the revision petitioner. Based on the said finding, the learned Judge of the Executing Court dismissed the said application and directed delivery of possession after removal of the obstruction caused by the revision petitioner. The said order dated 18.02.2011 is impugned in the present revision petition on various grounds set out in the grounds of revision.

5. Admittedly, the revision petitioner was not a party to the suit O.S.No.123 of 1996 on the file of the District Munsif-cum-Judicial Magistrate, Arcot. The suit was filed by Ranganathan and Chandra Ammal, who are husband and wife against

Karthigeyan and 6 others. The suit was decreed declaring the title of the respondents herein and also for recovery of possession of the suit properties after removal of the construction put up by them. None of the defendants, who suffered the decree, chose to challenge the decree by filing an appeal. When the decree was sought to be executed, the present petitioner in the revision was set up as an obstructor for the execution of the decree. As such, the present petitioner filed E.A.No.101 of 2005 claiming that she is the owner of Items 1 and 3 of the suit properties. She made the said claim on the premise that the said properties were assigned to her by virtue of an order of assignment made by the Government on 22.09.1989. However, the claim of the revision petitioner was resisted and her contention was refuted by the respondents herein, contending that the property assigned by the Government to the revision petitioner was not any one of the suit properties and that even the other property, which was assigned by the Government to the revision petitioner, had been sold away by her to one Pandurangan under a sale deed dated 19.09.1994. It was also contended therein that the said Pandurangan, after purchase, put up a building therein and is residing in the said property. The further contention of the first respondent herein before the Executing Court in the above said execution application was that the revision petitioner, without retaining any portion in the property assigned to her, sold the entire property to Pandurangan and that the revision petitioner, being none other than the wife of Judgment Debtor No.1 (Karthigeyan), she was set up by the judgment debtors to provide an obstruction.

6. When enquiry was conducted based on the above said pleadings, the revision petitioner, who filed the claim petition, did not enter the box to adduce evidence on her side. On the other hand, she chose to examine one Mr.Kannan, Manager of the Bank in which she allegedly deposited the assignment patta, as PW1. She had produced through the witness 7 documents marked as Exs.X1 to X7. On the side of the respondents, the first respondent figured as RW1 and six documents were marked as Exs.B1 to B6. The Bank Manager, examined by the revision petitioner on her side, did not support her case and in fact, he chose to give evidence to the effect that in the assignment patta deposited with the Bank for getting a loan, the revision petitioner had corrected the Patta Number from 145 to 146. On the other hand, the respondents, besides the oral testimony of RW1 which was clear and

categorical, have stated that the revision petitioner had sold away the property assigned to her and in that property the purchaser Pandurangan had put up a house and he was residing therein and that, after the sale made by her in favour of Pandurangan, the revision petitioner did not own any land in that area. They have also produced a certified copy of sale deed dated 19.09.1994 executed by the revision petitioner in favour of Pandurangan and marked it as Ex.B1.

7. The revision petitioner, who made a claim that she was the owner of Items 1 and 3 of the suit properties, did not produce the title deed and on the other hand, she simply contended that she was not in a position to produce the same as the said document was deposited with the Bank for availing Bank loan. The assignment deed dated 22.09.1989 has not seen the light of the day. Neither the original order of assignment, nor a copy of the same came to be produced by the revision petitioner. On the other hand, xerox copies of the encumbrance certificate and a letter issued by the Vellore District Central Cooperative Bank Limited, Arcot Branch, a copy of the certificate allegedly issued by the Tahsildar to the effect that the assignment patta had been deposited with the Bank for availing loan and the copies of the building plans and also mortgage deed had been produced on the side of the revision petitioner. According to the contention of the respondents, all those documents pertain to some other property, which was in fact assigned by the Government to the revision petitioner and the said property was also sold by the revision petitioner and she is no longer in possession of the said property.

8. In the absence of production of necessary documents to prove her claim and in the light of the fact that the respondents have chosen to produce a vital document showing that the property assigned by the Government in favour of the revision petitioner has already been sold to Pandurangan and he is in possession of the said property and that the said property has nothing to do with the suit properties, the learned Judge of the Executing Court has rendered a correct finding with a clear vision, which finding cannot be assailed as either infirm or defective capable of being interfered with by this Court in exercise of its power of revision. It should also be noticed that the revision petitioner, who chose to file the claim petition under Order XXI Rule 97 CPC, failed to show both the decree holders as party respondents and on the other hand, the first decree holder alone was shown as

the respondent. In the counter alone, the respondents have indicated that the decree was passed in favour of both the respondents herein. This Court wonders how the revision petitioner was able to file revision against both the decree holders, who are respondents 1 and 2 herein, as she had chosen to file the claim petition against one of the respondents alone. Apart from that, it is also pertinent to note that it is an undisputed fact that the revision petitioner is none other than the wife of Karthigeyan, the first defendant in the suit in which the decree under execution came to be passed. In view of the forgoing discussions, this Court comes to the conclusion that there is no merit in the revision and the revision petition deserves dismissal. In the result, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed. 18.02.2014 Index: Yes/No Internet: Yes/No gpa P.R.SHIVAKUMAR.J., gpa To The District Munsif-cum- Judicial Magistrate, Arcot, Vellore District C.R.P (NPD) No.4356 of 2011 & M.P.No.1 of 2011 18.02.2014

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