

Madras High Court

K.Suriyamurthi vs S.Arockiyamery By Power Agent on 20 August, 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20/08/2009

CORAM

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

CRP(PD)No.499 of 2009

MP.Nos.1 and 2/2009

1. K.Suriyamurthi
2. K.Shanmugam
3. K.Rengaraj
4. G.Chellamuthu

Petitioners

Vs

S.Arockiyamery by Power Agent
A.Charles

Respondent

Prayer

This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order in CMA.No.1/2008 dated 20.1.2009 on the file of the Sub Court, Pudukkottai and allow this civil revision petition.

!For Petitioners ... Mr.N.Balakrishnan
^For Respondent ... Mrs.AL.Ganthimathi

:ORDER

This Civil Revision Petition is filed by the defendants against the order passed by the Sub Court, Pudukkottai, dated 20.1.2009 in CMA.No.1/2008, granting temporary injunction in a suit for permanent injunction, reversing the order of the learned Principal District Munsif dated 27.4.2007 in IA.No.208/2007 in OS.No.96/2007.

2. The brief facts are as follows:-

The respondent/plaintiff filed the above said suit for permanent injunction restraining the petitioners/ defendants from interfering with his right to use the pathway described in the B-Schedule property on the basis that he had purchased the property described in A-Schedule to the

plaint by way of a registered sale deed dated 4.8.2005 from one Karuppan, the father of the defendants 1 to 3/petitioners 1 to 3 herein, in which the cart track is recited as northern boundary and further the said Karuppan had also executed a consent deed on the same date giving his consent to use the cart track by the respondent on the eastern end of S.Nos.166 and 167 to reach the A-Schedule Property comprised in S.Nos.168/3, 168/4 and 169/7A.

3. Pending the suit, the respondent has filed an application in IA.No.208/2007 for temporary injunction against the petitioners restraining them from obstructing the suit B-Schedule Cart track to reach the suit A-Schedule property and the petitioners contested the said application on the ground that there is no pathway as alleged by the respondent and it does not find a place in the revenue records at any point of time and pleaded that the consent deed dated 4.8.2005 is a fabricated one. After considering the contentions of both sides, the learned Principal District Munsif dismissed the said application by order dated 27.4.2007, as against which, the respondent had filed CMA.No.1/2008 before the Sub Court, Pudukkottai, who granted an order of interim injunction in favour of the respondent by order dated 20.1.2009, which is challenged in this civil revision petition by the defendants.

4. Mr.N.Balakrishnan, the learned counsel for the petitioners would contend that no pathway or cart track existed prior to the sale deed executed in favour of the respondent by their father and the entire extent in S.Nos.166 and 167 was in possession and enjoyment of the said Karuppan and his family members and no pathway existed on ground at any point of time on the eastern side or in any part of the survey numbers 166 and 167 and further it does not find a place in the revenue records namely, FMP and "A" Register, etc. As regards the consent deed relied on by the respondent, the learned counsel would contend that it is inadmissible in evidence, as it is neither stamped or registered as required by law.

5. The learned counsel for the petitioners would place reliance on the decisions of this court rendered in the case of S.Kaladevi Vs. V.R.Somasundaram and two others [2009-1-TLNJ-540-Civil] in support of his contention that if the document is inadmissible in evidence for want of registration, the terms cannot be admitted in evidence. He would further submit that unless the property is identifiable, no injunction could be granted and in support of the said contention, he relied on another decision of this court rendered in the case of Rathinasamy @ Rathinavelu Vs. P.S.Rajendran [2008-3- TLNJ-591-Civil].

6. Yet another contention was put forth by the learned counsel for the petitioners that interim injunction having the effect of granting a final relief should not be granted and the learned counsel for the petitioners would rely upon the decisions of the Division Bench of the Principal Bench of this Court rendered in the cases of Dr.M.Thirunavukkarasu Vs. Indian Psychiatric Society Tribunal by its Chairman, Prof.Shridhar Sharma and others [2008-2-CTC- 51] and the Bank of Tokyo Mitsubishi Limited, Mumbai Vs. Spartex Ceramic India Limited, Chennai-28 and others [2007-3-CTC-11].

7. Per contra, Mrs.AL.Ganthimathi, the learned counsel for the respondent would submit that the supervisory jurisdiction under Article 227 of the Constitution of India could be exercised for keeping the subordinate courts within the bounds of their jurisdiction and it is not available for correcting

mere errors of fact or law and available only when (1) error is manifest and apparent on the face of records and (2) grave injustice or gross failure of justice has been occasioned thereby. The learned counsel placed reliance on the decision of the Honourable Supreme Court rendered in the case of Surya Dev Rai Vs. Ram Chander Rai and others [2003-6-SCC-675] and drew the attention of this court to the relevant paragraph No.38 of the said decision. The relevant portion is extracted as under:-

"4. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

6. A patent error is an error which is self-evident i.e. Which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

8. The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

By referring to the above said observations of the Honourable Supreme Court, the learned counsel would contend that if the High Court intervenes in the pending proceedings, then there is bound to be a delay in termination of proceedings and the facts and circumstances of this case does not warrant interference by the court, as no grave injustice or gross failure has been occasioned.

8. In the instant case, on facts the pathway/cart track is recited in the sale deed, which is acknowledged by the vendor in the consent deed dated 4.8.2005. The vendor has given reasons for permitting the respondent to use the pathway, stating that for ingress and egress there is no other pathway for the use of the respondent and that has necessitated him to permit the respondent to use the pathway as alleged in the consent deed. It is pertinent to point out that the respondent has relied on the consent deed only for collateral purpose to show that the vendor permitted him to use the cart track for all purposes. Whether a document is admissible in evidence or not depends upon the nature and contents of the document and also facts and circumstances of each case and the Honourable Supreme Court in the case of Bondar Singh and others Vs. Nihal Singh and others [2003-4-SCC-161] has observed that if under law a document is required to be properly stamped and registered, even though not admissible in evidence can be looked into for collateral purposes. In the present case, the collateral purpose to be seen is whether the usage of pathway/carat track is acknowledged by the vendor to the respondent. Hence, the contention of the learned counsel for the petitioners that it cannot be admitted in evidence for non registration does not merit acceptance.

9. In the case of *Sadhana Lodh Vs. National Insurance Company Ltd and another* [2003-2-CTC-122], the Honourable Supreme Court, while dealing with the scope and ambit of supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution of India, has held that in exercising supervisory power, the High Court cannot act as an appellate court and it is not permissible for the High Court to review or reweigh the evidence, upon which inferior courts pass an order or to correct errors of law, while exercising jurisdiction under Article 227 of Constitution of India.

10. The first appellate court, after hearing both sides and analysing elaborately the materials and documents placed on record, granted an order of interim injunction after considering the balance of convenience and hardship caused to the respondent. In such a case, bearing in mind the principles enunciated by the Honourable Supreme Court in the decisions cited supra, this court, while exercising the revisionary power under Article 227 of the Constitution of India, will not interfere with the findings based on facts. In this case, no serious question of law is involved and the first appellate court, by factual analysis, has granted the order of interim injunction. Hence, I am of the considered opinion that the impugned order does not suffer from any illegality or infirmity and no interference with the findings of the first appellate court is warranted.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MPs are closed.

Srcm To:

The Sub Court, Pudukkottai