

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4366 of 2015

and

M.P.No.1 of 2015

M.Durai

.. Petitioner

Vs

M.Venkata Subramaniam

By his Power of Attorney Holders,

1.R.Sundarajan

2.K.Rajendran

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.08.2014 passed in I.A.No.377 of 211 in O.S.No.66 of 2008 on the file of the I Additional Subordinate Judge, Salem.

For Petitioner : Mr.P.Jagadeesan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 28.08.2014 passed in I.A.No.377 of 211 in O.S.No.66 of 2008 on the file of the I Additional Subordinate Judge, Salem.

2.The respondent as a plaintiff filed a suit for partition and separate possession of $\frac{1}{2}$ share in the suit property stating that the plaintiff and the first defendant has purchased the property jointly. But the first defendant and her husband has fraudulently forged the signature of the plaintiff and sold the plaint property and the defendants 3 and 4 are the purchasers of the property. The fourth defendant/petitioner herein filed an application under Order 7 Rule 11 CPC in I.A.No.377 of 2011 for rejecting the plaint stating that without the prayer for setting aside the sale deed, the suit is not maintainable and also the suit filed against the dead person is nullity. The Trial Court after hearing both sides has dismissed the application. Against which, the present revision has been preferred by the fourth defendant/petitioner.

3.Learned counsel for the petitioner submitted that without the prayer for setting aside the sale deed, the suit is not maintainable. He further submitted that the third defendant died in the year 2002 whereas the suit has been filed on 08.02.2008 and so, the suit filed against the third defendant is nullity. That factum has not been considered by the Trial Court. Hence, he prayed for setting aside the order passed by the Trial Court in I.A.No.377 of 2011. To substantiate his argument, the learned counsel for the petitioner relied upon the following decisions:

- 1. AIR 1978 MADRAS 294 (State Trading Corporation of India Limited vs. K.V.Vaidyalingam and others)**
- 2. AIR1988 DELHI 267 (Pratap Chand Mehta vs. Smt.Krishna Devi Mehta (Deceased by LRs))**

4.Considered the submissions made by the learned counsel for the petitioner and also perused the typed set of papers.

5.The respondent as a plaintiff filed a suit for partition and separate possession of $\frac{1}{2}$ share in the suit property stating that the plaintiff and the first defendant jointly purchased the property on 09.06.1989. But without the knowledge of the plaintiff, the first defendant has sold the property to the third parties and the third parties sold the same in favour of the defendants 3 and 4. Immediately the respondent/plaintiff filed a suit for partition and separate possession. Admittedly the plaintiff is not a party to the sale deed. In such circumstances, whether the sale deed has been fabricated and whether impersonation has been done has to be decided only at the time of trial. Further, while considering the application under Order 7 Rule 11 CPC, the averments in the plaint has been looked into wherein it was specifically mentioned that without the knowledge of the plaintiff, the document has been executed, fabricated and forged. Therefore, the argument advanced by the learned counsel for the petitioner that without the prayer for setting aside the

sale deed, the suit is not maintainable does not merit acceptance.

6.The second limb of argument of the learned counsel for the petitioner is that the suit has been filed on 08.02.2008, but whereas the third defendant died in the year 2002. Therefore since the suit has been filed against the dead person, the suit itself is nullity. But the above argument does not hold good because the third defendant alone is dead and hence the suit is nullity only against the third defendant and not against the fourth defendant. So, the decisions relied upon by the learned counsel for the petitioner in ***AIR 1978 MADRAS 294*** and ***AIR 1988 DELHI 267*** are not applicable to the facts of the present case.

7.Considering the aforestated circumstances, I am of the view that the application filed by the fourth defendant/petitioner herein under Order 7 Rule 11 CPC is not maintainable. So, I do not find any irregularity or illegality in the order passed by the Trial Court and hence, the Civil Revision Petition deserves to be dismissed.

8.In the result, the Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed. No costs.

20.11.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Additional Subordinate Court, Salem.

R.MALA. J.,

cse

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