

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.720 of 2016

&

C.M.P.No.3712 of 2016

R.Vasanthi

.. Petitioner

vs.

1.R.Venkatasubramanian

2.Amsavalli Ammal

3.Shanthi

4.Sumathi

5.Malathi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in I.A.No.6701 of 2015 in O.S.No.3254 of 2012 passed by the learned XVI Assistant City Civil Judge, Chennai dated 04.11.2015.

For Petitioner : Mr.C.S.R.Williams
for Mr.R.C.Paul Kanagaraj

ORDER

The submissions made by Mr.C.S.R.Williams, learned counsel appearing on behalf of Mr.R.C.Paul Kanagaraj, learned counsel on record for the petitioner are heard. Copy of the impugned order and the copies of the

other documents produced in the form of typed-set of papers and also the grounds of revision are perused.

2. The petitioner herein is the plaintiff in the original suit O.S.No.3254 of 2012 on the file of the XVI Assistant Judge, City Civil Court, Chennai. The first respondent is none other than her brother. The second respondent is none other than her mother and respondents 3 to 5 are the sisters of the petitioner. Admittedly, a release deed was executed by Ragupathy, the father of the petitioner/ plaintiff and father of the respondents 1 and 3 to 5 and husband of the second respondent, gifting the suit property to his only son, namely the first respondent herein. Contending that the gift deed dated 25.02.2004 executed by Ragupathy in favour of his son, namely the first respondent and registered as Document No.547 of 2004 at the office of the Sub-Registrar, T.Nagar was a sham and nominal document and hence, the said transaction of release was not binding on the petitioner/plaintiff, she claimed 1/6th share in the suit property. Accordingly, the suit was filed for partition and also a declaration that the said settlement deed was sham and nominal.

3. After the respondents entered appearance and filed their written statements and when the suit stood listed for trial, the petitioner herein/plaintiff filed I.A.No.6701 of 2015 for amendment of the plaint. The proposed amendment was to the effect that Raghupathy's mother

Kamalammal owned a property comprised in D.No.32/54 and D.No.79/33, Sri Ram Pettai Street, East C.I.T.Nagar, Nandanam, Chennai- 600 035 as its absolute owner and she died intestate leaving her three sons, namely R.Vasantharayan, R.Murugesan and R.Raghupathy as her legal heirs; that R.RAGhupathy, father of the plaintiff released his share in the said property of his mother for a consideration in favour of his other brothers; that using the amount thus derived by the release, the suit property in question, namely D.No.59/29, 1st Cross Street, C.I.T.Nagar, Nandanam, Chennai – 600 035 comprised in T.S.No.44 Block No.50 in R.S.No.40/5 measuring 1200 Sq.ft within the specified boundary, was purchased by him and that hence, the petitioner/plaintiff was having 1/6th share in the said property thus acquired by Raghupathy.

4. The same was resisted by the respondents. The learned trial Judge, after hearing, dismissed the said application. As against the said order of dismissal dated 04.11.2015 passed by the learned trial Judge in I.A.No.6701 of 2015 in O.S.No.3254 of 2012, the present Civil Revision Petition has been filed.

5. Though the learned counsel for the petitioner wants to contend that the petitioner did not get the particulars of the document earlier and only after the filing of the suit, she came to know the particulars of the release deed executed by her father in favour of the other sons of Kamalammal, and

the same made it necessary for the plaintiff to seek the amendment of plaint, in her affidavit there is nothing regarding the date of release of the share of Raghupathy in the property of his mother Kamalammal. No particulars regarding the release deed allegedly executed by Raghupathy, not even the date of the document, nor the registration number of the document came to be furnished in the affidavit filed in support of the petition seeking amendment. The proposed amendment reads as follows:

"4.The plaintiff submits that originally her grand-mother namely Kamalamal had acquired and possessed the properties bearing D.No.32/54 and D.No.79/33 situated at Sri Ram Pettai Street, East C.I.T.Nagar, Nandanam, Chennai – 600 035 and she was the absolute owner of the said property and she died intestate leaving behind her legal heirs namely (1) R.Vasantharayan, (2) R.Murugesan and (3) R.Raghupathy, the father of plaintiff. The said all the legal heirs of Kamalamma were residing jointly at D.No.34/54, Sri Ram Pettai Street, East C.I.T.Nagar, Nandanam, Chennai – 600 035 and the said father of the Plaintiff namely R.Raghupathy had released his rights over the properties of his mother by executing Release-deed in favour of his elder brothers namely (1) R.Vasantharayan, and (2) R.Murugesan and the consideration amount arrived from executing such release deed, the father of the plaintiff had purchased the schedule mentioned suit property and as such he purchased the suit property from and out of the income derived from the joint family property and as such the suit property is having a nature of ancestral one and father of the plaintiff cannot act or dispose the said property in the capacity of absolute owner and he can dispose the property to the extent of which he is

eligible and not entire property and the said other legal heirs of Kupammal, namely (1) R.Vasantharayan and (2) R.Murugesan are enjoying the said properties bearing D.No.79/33 and D.No.32/54, situated at Sri Ram Pettai Street, East C.I.T.Nagar, Nandanam, Chennai- 600 035 respectively."

6. A reading of the said proposed amendment will show that the petitioner did not furnish either the date, registration number or other particulars of the alleged release deed executed by Raghupathy in favour of the other legal heirs of Kamalamal. On the other hand, the petitioner wants to contend that the consideration received for such a release was used for the purpose of acquisition of the suit property and hence the suit property was not the absolute property of Raghupathy. The same is also vexatious, which is apparent from the plea made by the petitioner/plaintiff.

7. According to the averments contained in the affidavit supporting the amendment petition, the other property was not the joint family property of Raghupathy and on the other hand, it was owned by his mother Kamalammal. After the death of Kamalammal leaving 3 legal heirs including Raghupathy, Ragupathy released his 1/3rd share and he got the consideration for the same. That 1/3rd share and the consideration for releasing the same cannot be construed to be the joint family property in the hands of Raghupathy and it was his absolute property. Assuming that the suit property was acquired using the amount received as consideration for

the release of his share in his mother's property, such acquisition will be his self-acquisition only. That is the reason why the petitioner/plaintiff herself, in the original plaint, contended that her father Raghupathy died intestate leaving 6 legal heirs, who are the petitioner and the respondents herein and she became entitled to 1/6th share by virtue of the rule of succession provided in the Hindu Succession Act. Knowing fully well that Raghupathy had executed a gift settlement in favour of the first respondent giving the entire suit property to him, the petitioner / plaintiff chose to contend that the settlement deed dated 25.02.2004 bearing Document No.547 of 2004 registered in the office of the Sub-Registrar, T.Nagar was a sham and nominal document. Now, giving a go by to the original stand taken by her, the petitioner wants to build up a new case, which claim is also vexatious and untenable.

8. The learned trial Judge, upon proper consideration of the scope of the prayer, chose to arrive at a correct conclusion that the petitioner wanted to prolong the case; that the petition for amendment was an attempt to change the very nature of her contention and that hence it could not be allowed. This Court does not find any defect or infirmity in the order passed by the trial Court, warranting interference by this Court in exercise of its power of superintendence under Article 227 of the Constitution of India. There is no merit in the revision and the revision does not even merit admission. The revision deserves dismissal at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

07.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

XVI Assistant City Civil Judge
Chennai

P.R.SHIVAKUMAR.J.,

gpa

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