

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P.(PD)No.1322 of 2017
and
CMP.No.6141 of 2017**

S. Shikkana Chetti @ Suresh .. Petitioner

Vs.

T. Bhuvaneswari .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.12.2016 made in I.A.No.526 of 2015 in O.S.No.171 of 2014 passed by the 3rd Additional District Judge, Salem.

For Petitioner : Mr.K.T.S.Sivakumar

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 01.12.2016 in I.A.No.526 of 2015 in O.S.No.171 of 2014 passed by the 3rd Additional District Judge, Salem.

2. The petitioner is the defendant in suit in O.S.No.171/2014. The respondent filed the said suit for declaration declaring her as the owner of the property and for possession. According to the respondent, her father

S. Veeri Chettiar settled the suit property in her favour and she has become the absolute owner of the property from the date of settlement. The petitioner filed I.A.No.526/2015 under Order 7 Rule 11 for rejection of the plaint on the ground that the suit property originally belonged to Sikkana Chetti @ Suresh, father of S.Veeri Chettiar. After his death, the father of the respondent has no independent right over the suit property as there are other legal heirs viz., S.Saraswathi Ammal, wife of K.A.Siddhaiya Chettiar and S.Sakunthala & R.Kokila, who are the daughters of K.A.Siddhaiya Chettiar. Settlement deed executed by Veeri Chettiar in favour of respondent is not valid. Based on the said settlement deed, there is no cause of action to file a suit by respondent.

3. The respondent filed counter and denied all the averments made by the petitioner in the affidavit and submitted that after the death of her grandfather-K.A.Siddhaiya Chettiar, his legal heirs, grandmother-S.Saraswathi Ammal and her maternal aunts-Sagunthala and Kokila executed a Registered Release Deeds releasing their rights in favour of S.Veeri Chettiar by release deeds dated 17.04.1997 and 15.07.1999 and the father of the respondent executed the settlement deed in her favour.

4. In such circumstances, the release deed executed by her father is a valid and legal and she has also filed both the death and legal heir certificates.

5. Learned Trial Judge, considering all the averments available in the affidavit and counter affidavit and on perusing the other materials on record, dismissed the application holding that whether the documents relied on by the respondent is valid or not can be decided only at the time of trial.

6. Aggrieved against the same, the present Civil Revision Petition is filed by the petitioner. The petitioner has filed an application under Order VII Rule 11 of CPC for rejection of plaint. Whether the said application can be allowed or rejected can be decided only based on the averments made in the plaint and documents relied on by the plaintiff. The averments made by the defendant in the suit and the affidavit filed in support of the application to reject the plaint and documents relied upon by the defendant, cannot be considered at this stage.

7. In the present case, the respondent is claiming a title based on the settlement deed executed by her father. Whether her father has right to settle the entire property on the respondent or not can be decided only after letting in oral and documentary evidence by the parties at the time of trial.

8. Perusing the materials available on record and considering the above aspect while passing order, the learned III Additional District Judge,

Salem, has held that there is no cogent and valid reason to allow the application and hence, dismissed the same. There is no irregularity or illegality in the order warranting interference by this Court.

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

10.04.2017

Speaking/Non-speaking order

Index :Yes/No

gv

To

The III Additional District Judge,

Salem.

V.M.VELUMANI,J.

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