

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2758 of 2013
& M.P.No.1 of 2013

Rajarathinam

.. Petitioner

Vs.

1.Santhi
2.Chandrakumar
3.Mohankumar
4.Muthusamy
5.Sampoornam
6.Dhandayuthapani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.03.2013 made in I.A.No.1352 of 2012 in O.S.No.271 of 2010 on the file of the District Munsif Court, Palacode.

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For Petitioner : Mr.S.Saravanakumar

For R1 to R3 : Mr.V.R.Annagandhi

For R4 : M/s.K.Jenitha
R5 : died

For R6 : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 08.03.2013 made in I.A.No.1352 of 2012 in O.S.No.271 of 2010 on the file of the District Munsif Court, Palacode.

2. The petitioner is the second defendant, respondents 1 to 3 are the plaintiffs, fourth respondent is the first defendant and respondents 5 and 6 are the defendants 4 and 5 in O.S.No.271 of 2010 on the file of the District Munsif Court, Palacode. The respondents 1 to 3 filed above suit for declaration to declare the sale agreement dated 16.06.2010 bearing document No.1967/2010 executed between the petitioner and sixth respondent herein is null and void and is not binding on the respondents 1 to 3 and for permanent injunction against the petitioner and other defendants restraining them from alienating or creating any encumbrance over the suit property by way of conveyance. The petitioner filed written statement and is contesting the suit. The petitioner filed I.A.No.1352 of 2012 for stay of the suit in O.S.No.271 of 2010 till the disposal of the appeal filed against the judgment and decree dated 29.04.2010 passed in O.S.No.114 of 2004 pending on the file of the Subordinate Court, Dharmapuri.

3. According to the petitioner, the suit in O.S.No.114 of 2004 is for partition and a preliminary decree was passed. Challenging the same, the deceased third defendant filed an appeal. The properties in the present suit and earlier suit in O.S.No.114 of 2004 are one and the same. The deceased third defendant has settled the suit property in favour of the petitioner and second respondent/second plaintiff by settlement deed dated 30.05.2003. Pending appeal, third defendant died and the petitioner has filed an application for impleading himself as party to the appeal on the ground that the third defendant settled the property on the petitioner and second respondent/second plaintiff.

4. The first respondent filed counter affidavit and the same was adopted by the respondents 2 and 3. The respondents 1 to 3 stated that the second respondent/second plaintiff was not aware of the settlement deed dated 30.05.2003 executed in his favour. The settlement deed was never acted upon. The petitioner filed I.A.No.801 of 2012 in O.S.No.114 of 2004 stating that he is entitled to the suit property based on the Will and now the petitioner has filed the present application in I.A.No.1352 of 2012 stating that he is entitled to have the suit property based on the settlement deed

dated 30.05.2003. It shows that the petitioner has taken a contrary stand in the earlier application and present application. The petitioner has no locus standi to file appeal against the decree and judgment dated 29.04.2010 passed in O.S.No.114 of 2004.

5. The fourth respondent filed separate counter affidavit and the same was adopted by fifth respondent herein. The respondents 4 and 5 have denied the settlement deed and contended that the petitioner and respondents 1 to 3 have colluded together to defraud the share of the respondents 4 and 5. Fourth respondent is the father of the petitioner. The present application is filed only to delay the final decree proceedings in I.A.No.191 of 2011 and prayed for dismissal of the present application.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record and the fact that the petitioner has not furnished any appeal number said to have been filed against the judgment and decree passed in O.S.No.114 of 2004 pending before the Subordinate Court, Dharmapuri, dismissed the application.

7. Against the said order of dismissal dated 08.03.2013 made in I.A.No.1352 of 2012, the present Civil Revision Petition is filed by the petitioner.

8. Heard the learned counsel for the petitioner as well as the respondents 1 to 4 and perused the materials available on record.

9. The contention of the learned counsel for the petitioner that the present O.S.No.271 of 2010 has to be stayed in view of the pendency of the appeal filed against the preliminary decree passed in O.S.No.114 of 2004.

10. Though the petitioner has prayed that the present suit has to be stayed in view of the pendency of the appeal, he has not given any case number of the first appeal in the affidavit filed in support of the present application and in the grounds of revision. In view of the same, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 08.03.2013.

11. The learned counsel appearing for the respondents 1 to 3 submitted that the petitioner filed the present application at the time of cross examination of P.W.1 and therefore, a direction may be issued to the learned trial Judge for speedy disposal of the suit.

12. In the result, the Civil Revision Petition is dismissed as devoid of merits. As the suit is of the year 2010, the learned trial Judge is directed to dispose the suit in O.S.No.271 of 2010 as expeditiously as possible, in any event not later than four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

10.10.2017

Index : Yes/No
dm/kj

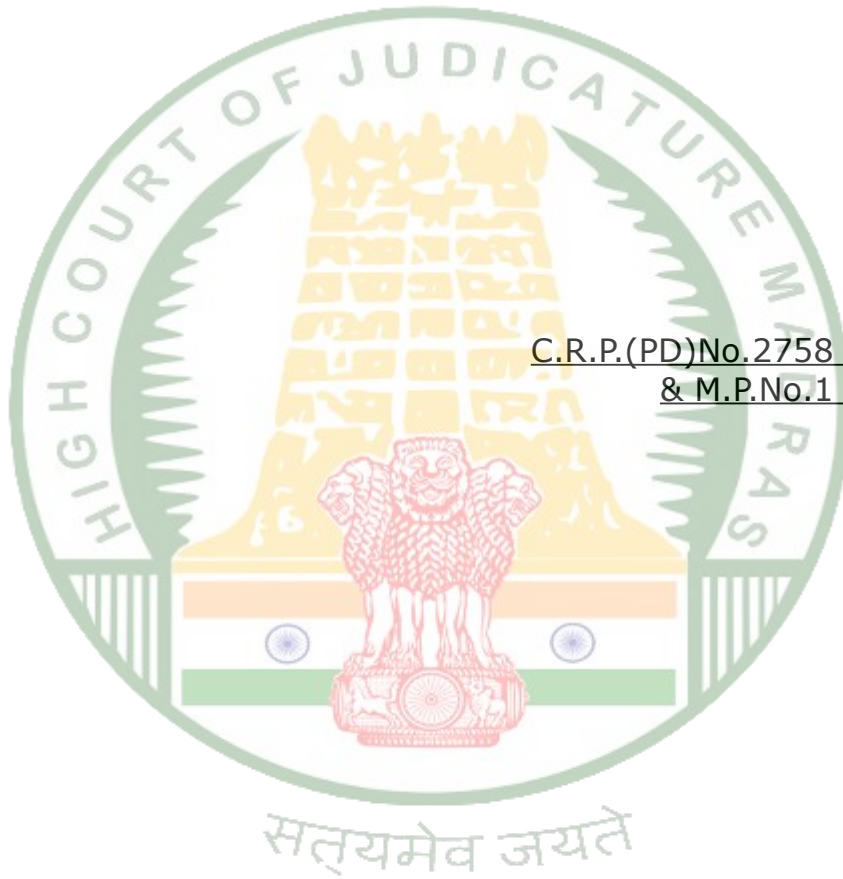
To

The District Munsif, Palacode.

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V.M.VELUMANI, J.

dm/kj



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