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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P(PD) (MD)Nos.1066 of 2017

and

C.M.P(MD) .No.4751 of 2017

J.Varusai Mohamed :Appellant/Petitioner/Plaintiff

vs.

1.S.K.Jamaludheen

2.J.Prem Nazeer

3.J.Bakrudheen Ali

:Respondents/Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.111 of 2017 in O.S.No.99 of 2011 by the Principal District Munsif, Manamadurai on 11.04.2017.

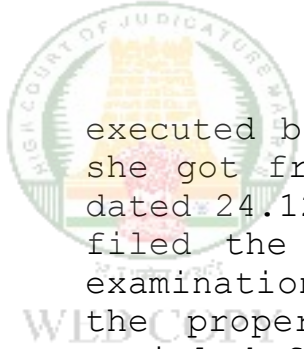
For Petitioner : Mrs.Laxmi Gopinathan for
M/s.Polax Legal Solutions

ORDER

This Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.111 of 2017 in O.S.No.99 of 2011 by the Principal District Munsif, Manamadurai on 11.04.2017.

2.The revision petitioner is the plaintiff in the suit, filed for declaration of title in respect of the suit property and also to declare the cancellation of the settlement deed, dated 03.05.2011 as null and void. The specific case of the revision petitioner in his plaint is that the suit property was purchased by the first defendant on 31.05.1989. He executed a registered gift settlement deed in favour of the plaintiff on 22.04.2011, since, then, he is in possession and enjoyment of the property. While so, without notice or authority, by force and influence, the first defendant cancelled the settlement deed, on 03.05.2011. Hence, the suit for declaration of the title based on the settlement deed, dated 22.04.2011 and consequential relief.

3.The matter has been contested by the defendants and when posted for arguments, an application has been filed to re-open and recall P.W.1 to mark certain documents. The document proposed to be marked through the witness is the Inam deed, dated 16.02.2017,



executed by the plaintiff's wife infavour of the plaintiff, which she got from her husband, the plaintiff herein through sale deed dated 24.12.2013 pending suit. The revision petitioner herein has filed the said application, because during the course of cross examination, he has admitted that pending suit, he has transferred the property in favour of his wife and therefore he is not entitled for the relief of declaration of title. After admitted in the cross examination the alienation of the suit property in favour of his wife pending suit, when the matter was posted for arguments on 14.02.2017, his wife has executed a Inam deed in his favour. Therefore, taking note of this fact, the trial Court has held that these transactions are pending litigation, therefore this will not have any barring on the suit. With this observation, the application to re-open and receive documents was dismissed.

4. Aggrieved by the said dismissal order, the present revision petition is filed on the ground that the parties to the suit should be given sufficient opportunity to prove their case in the trial. By denying the plaintiff from marking the alleged settlement deed executed by his wife, in respect of the suit property, the plaintiff is deprived by the opportunity to prove his case.

5. This Court is not convinced by the said submission for the simple reason that the revision petitioner / plaintiff had thought fit to transfer the property in favour of his wife, pending litigation and got it re-transferred in his name after deposing as witness in this case admitting the transfer pendente lite.

6. It is brought to the notice of this Court that his wife filed an impleading petition in the suit after the settlement of the property in her favour. But the Court has declined to entertain her petition. Later on, after completion of the trial, when the matter was posted for argument, the subsequent re-transfer of property by way of settlement has been effected on 16.02.2017. Since, both the transfer and re-transfer were done, pending litigation, the earlier application to implead, filed by the wife as well as the present application filed by the revision petitioner to re-open are transactions pendente lite so have no legs to stand.

7. This Court finds no error in the order of the Trial Court. The Trial Court while deciding the suit shall take note of the status and title of the plaintiff on the date of the filing the suit and not be carried away by the subsequent transfer and re-transfer of the property. Hence, this Court finds no material to interfere in the order passed by the Trial Court.



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

Sd/-

Assistant Registrar (RTI)

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/True Copy/

Sub Assistant Registrar.

To
The Principal District Munsif,
Manamadurai.

+1CC to M/S. Polax Legal Solution, SR.No. 59092

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RM/SKM

AM/SV MMS/SAR 2/14.06.2017/2P/3C