



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.399 of 2017 (PD)

P.Poomathi

....Petitioner/Plaintiff

Vs.

1.P.Viswanathan

2.V.Suresh

3.V.Santhi

4.Amutha

5.V.Kavitha

6.V.Vanitha

7.T.Vishnu Jothi

...Respondents/Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the docket order, dated 20.12.2016 in Unnumbered O.S.No. Of 2016 on the file of Principal Sub Judge, Nagercoil and to number the Unnumbered O.S.No. Of 2016 on the file of Principal Sub Judge, Nagercoil.

For Petitioner : Mr.M.P.Senthil

ORDER

The petitioner has filed this Civil Revision Petition to set aside the docket order, dated 20.12.2016 in Unnumbered O.S.No. Of 2016 on the file of Principal Sub Judge, Nagercoil and to number the Unnumbered O.S.No. Of 2016 on the file of Principal Sub Judge, Nagercoil.

2.The petitioner is the wife of the first respondent and mother of respondents 2 to 6 and mother-in-law of 7th respondent. According to the petitioner, from and out of sale of her jewels given at the time of marriage and sale of 45 cents of her land, purchased the suit property in the name of the first respondent. The first respondent is a Trustee of petitioner being her husband. The first respondent settled the property on the respondents 2 to 7. The petitioner filed suit for declaration and injunction.

3.The learned Judge returned the plaint raising query with regard to maintainability as property originally stood in the name of first respondent before he settled the same in the name of respondents 2 to 7. The petitioner re-presented the plaint stating that as per Benami Transaction (Prohibition) Act, 1988, the first



respondent is only a Trustee of petitioner and he is in a fiduciary capacity. The learned Judge did not accept the same and again returned the plaint.

4. Against the said return, the petitioner has come out with the present Civil Revision Petition.

5. From the materials on record, it is seen that it is the contention of the petitioner that suit property was purchased by selling her jewels and 45 cents of land given at the time of her marriage, being wife of first respondent. The first respondent is only a Trustee and he is in fiduciary capacity in relation to petitioner. The contention that properties are purchased from and out of amounts of the petitioner has to be proved by the petitioner by letting in oral and documentary evidence. Similarly, the petitioner has to prove that first respondent is only a Trustee by evidence.

6. In the Circumstances, the Civil Revision Petition is allowed, if the petitioner re-present the plaint within two weeks from the date of receipt of a copy of this order, the learned Principal Sub Judge, Nagercoil is directed to number the same without raising question of maintainability in the plaint, if it is otherwise in order. No costs.

sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To
The Principal Sub Judge,
Nagercoil.

Copy to: The Section Officer,
ER Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr. M. P. Senthil, Advocate Sr. No. 11451

am/mrn

sm:RR:16.3.2017:2P/4c

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