

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD).No.1708 of 2018

and C.M.P.No.9360 of 2018

Eswari

... Petitioner

Vs.

N.Danalatchoumy (Died)

1. N.Kanniappan

Meenatchi (Died)

2. N.Kanniappan

3. N.Perumal Swamy

4. R.Maily

5. N.Mariyappan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decree in I.A.No.1062 of 2017 in O.S.No.310 of 2003 pending on the file of Additional Sub Judge, Pondicherry.

For Petitioner : Mr.C.A.Diwakar

ORDER

The relief sought for in this revision is to set aside the Order and decree made in I.A.No.1062 of 2017 in O.S.No.310 of 2003 pending on the file of learned Additional Sub Judge, Pondicherry.

2. The respondents 1 & 2 filed a suit against the other respondents in O.S.No.310 of 2003 before the learned Additional Sub Judge, Pondicherry for partition. Subsequently, the revision petitioner was impleaded as 6th defendant and filed a written statement.

3. During the pendency of the suit, the petitioner herein filed an Interlocutory application under Order VII, Rule 11 (d) of C.P.C r/w. Section 4 of Prohibition of Benami Property Transaction Act for rejection of plaint. The learned trial Judge, after elaborate discussion, dismissed the application for rejection of plaint.

4. Aggrieved against the order passed by the trial Court dated 15.02.2018, the revision petitioner is before this Court.

5. Heard the learned counsel for the petitioner and perused the available materials on record.

6. The learned counsel for the petitioner would submit that the respondents have not specifically challenged the Will and sale deed standing in favour of the petitioner/6th defendant. Therefore, in the absence of

production of any Will and Sale Deeds, the suit is not maintainable and it is liable to be set aside. These facts has not been considered by the trial Court while deciding the application.

7. Admittedly, the revision petitioner is the 6th defendant in the suit, filed by the deceased N.Danalatchoumy and it is not in dispute that the respondent is none other than the brother's wife of the revision petitioner. According to the respondent /plaintiff the suit properties are in the name of the respondent/first defendant, the same was purchased out of the Joint family nucleus. The first respondent is the name lender of the suit property therefore he filed the suit for partition. Subsequently, the property was sold to the 6th defendant, she filed an application to reject the plaint. It is clearly stated that the sale Deed executed in favour of the 6th defendant is a sham, nominal, Vioid, Abinitio, nonest in the eye of law.

8. Therefore, under these circumstances, at the time of deciding the application filed under order VII Rule 11 of C.P.C, the trial Court has to look into the averments made in the plaint as to whether it is barred by any law. The defence taken by the 6th defendant in the application for rejection of

plaint need not be looked into. Therefore, the trial Court rightly dismissed the application.

9. Therefore, this Court finds that there is no illegality or perversity in the order passed by the trial Court and finds no merits in the revision petition.

10. In the result, the revision petition is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

12.06.2018

Index:Yes/No
Speaking order / Non speaking order
vum

To
The Additional Sub Judge,
Pondicherry .

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