

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4545 of 2015
& M.P.No.1 of 2015

Gokulakrishna

.. Petitioner

Vs.

1.G.M.Raghavelu
2.Tharabai
3.N.Karuna
4.D.Prema
5.G.N.Premkumar
6.G.N.Pratap
7.G.N.Prabhu
8.G.M.Essurathinam
9.G.M.Lakshmanan
10.R.Mary
11.Mariamamma
12.Anitha
13.Baby
14.G.M.Rajkumar
15.C.Chandrakumar
16.C.Rathi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 19.06.2015 made in I.A.No.1842 of 2015 in O.S.No.5371 of 2012 on the file of the XVIII Assistant City Civil Court, Chennai.

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For petitioner : Mr.G.Nagarajan

For R1 : M/s.Ambigapathi

For R2 to R16 : Given up

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 19.06.2015 made in I.A.No.1842 of 2015 in O.S.No.5371 of 2012 on the file of the XVIII Assistant City Civil Court, Chennai.

2.The petitioner is 14th defendant, first respondent is plaintiff and respondents 2 to 16 are the defendants 1 to 13, 15 and 16 in O.S.No.5371 of 2012 on the file of the XVIII Assistant City Civil Court, Chennai. The first respondent filed the said suit against the petitioner and respondents 2 to 16 for declaration to declare the settlement deed dated 08.12.2008 executed by 9th respondent in favour of the 11th respondent, to declare the sale deed dated 09.02.2009 executed by 11th respondent in favour of the petitioner, to declare the sale deed dated 24.08.2009 executed by the 9th respondent in favour of the respondents 15 and 16 as null and void, for partition and permanent injunction restraining the respondents 2

to 14 not to put up any construction in the suit schedule property and permanent injunction restraining the petitioner and respondents 15 and 16 not to alienate the suit property. The petitioner is purchaser from 9th respondent. The petitioner filed written statement on 10.06.2013 and additional written statement on 03.09.2014 and is contesting the suit. The first respondent filed I.A.No.1842 of 2015 for amendment of the plaint. According to the first respondent, his father executed and registered a Will dated 12.08.1978 bequeathing the property only to his sons i.e., first respondent and respondents 3 to 7, who are the legal heirs of the deceased G.M.Narayanan and respondents 8, 9 and 14. The first respondent claims that he came to know about the said Will only on 07.01.2015 and filed the present petition to amend the plaint with regard to his share claim in the suit as 1/5 share instead of 1/9 share. According to the first respondent, as per the Will dated 12.08.1978, the daughters of his father viz., respondents 2 and 10 to 13 are not entitled to any share.

3.The respondents 2 to 16 did not file any counter affidavit and they were set exparte. The petitioner filed counter affidavit, opposing various allegations on merits and contended that the first

respondent is introducing a new case and the claim of the first respondent based on the Will dated 12.08.1978 is only an after thought. The first respondent has not given any particulars as to when and from whom he came to know about the Will dated 12.08.1978. The Will is executed in Chennai, unless it is probated, it cannot be acted upon and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit and nature of the relief sought and the fact that the trial has commenced, allowed the application, holding that first respondent is not introducing any new cause of action and petitioner and other defendants will have an opportunity to file additional written statement and there will be no prejudice caused to the petitioner and other defendants.

5.Against the said order dated 19.06.2015 made in I.A.No.1842 of 2015 in O.S.No.5371 of 2012, the petitioner has come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record.

7.The first respondent filed suit for declaration to declare the settlement deed dated 08.12.2008 executed by 9th respondent in favour of the 11th respondent, to declare the sale deed dated 09.02.2009 executed by 11th respondent in favour of the petitioner, to declare the sale deed dated 24.08.2009 executed by the 9th respondent in favour of the respondents 15 and 16 as null and void, for partition and permanent injunction restraining the respondents 2 to 14 not to put up any construction in the suit schedule property and permanent injunction restraining the petitioner and respondents 15 and 16 not to alienate the suit property. The first respondent has sought for amendment with regard to the extent of the share as 1/5 share instead of 1/9 share. This amendment sought for is based on the Will dated 12.08.1978 executed by the father of the first respondent and others. According to the first respondent, only the sons of his father are entitled to the shares as per the Will and bequeathed the property only in favour of his sons while daughters are excluded and therefore first respondent is entitled to get more share than what is claimed originally in the suit. By this amendment, it cannot be said that the first respondent is introducing a new case and new cause of action and the amendment

sought is pre-trial amendment. Hence petitioner will not be prejudiced by this amendment. The learned Judge considered all the above facts and allowed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 19.06.2015 made in I.A.No.1842 of 2015 in O.S.No.5371 of 2012.

8.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. It is open to the petitioner to file additional written statement after amendment being carried out.

31.01.2018

Index :: Yes/No
Speaking Order/ Non-Speaking Order
gsa

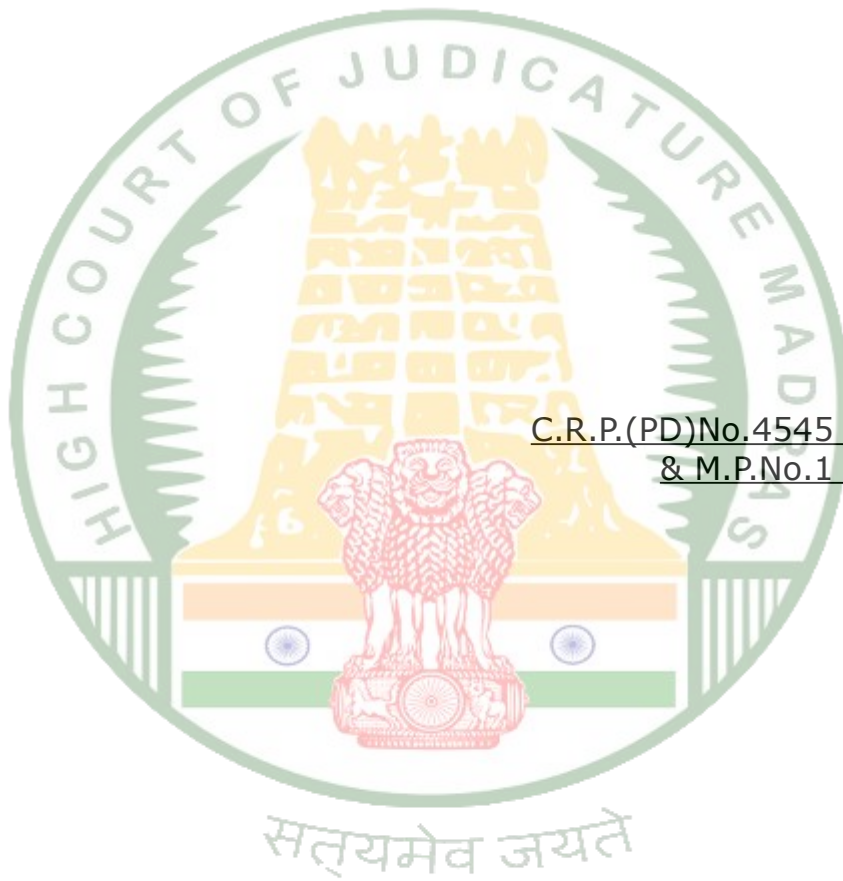
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To
The Judge,
XVIII Assistant City Civil Court,
Chennai.

V.M.VELUMANI, J.

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