

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(P.D).No.1120 of 2018
and
C.M.P.No.5856 of 2018

Mrs.T.Lalitha Petitioner

-VS-

1.J.Ganesh

2.J.Visalakshi

3.S.J.Kannan ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against to set aside the order and decretal order passed in I.A.No.12604 of 2017 in O.S.No.3950 of 2017 dated 05.12.2017 on the file of the XII Judge, Assistant City Civil Court, Chennai.

For Petitioner : Mr.P.Sunil

For R1 : Mr.G.Peranban

For R2 & R3 : No Appearance

ORDER

The above Civil Revision Petition has been filed challenging the dismissal of application filed by the revision petitioner under Order VII Rule (11) of the Code of Civil Procedure for rejecting the plaint filed by the first respondent herein.

2.The facts in brief are as follows. The first respondent has filed a suit in O.S.No.3950 of 2017 on the file of the XII Assistant City Civil Court, Chennai for the following reliefs:

i) To declare the suit schedule property land with building situated at Kodambakkam Village, Mambalam Taluk, Chennai District comprised in Survey No.236/1A1A, R.S.No.237/2A, Block No.91, T.S.No.91, Measuring an extent of 2037 Sq. ft., bearing Plot No.118, Old Door No.5/2, New Door No.21/1, Annamalai Chetty Nagar, 3rd Street, West Mambalam, Chennai – 600 033, was held in the name of 1st defendant for the benefit of the legal heirs of the deceased K.Jumbulingam. The 1st defendant stands in fiduciary capacity and consequently declare the settlement deed dated 25.06.2015 registered under Doc.No.1707 of 2015 (SRO, Ashok Nagar) executed by the 1st defendant to in favour of 2nd defendant be null and void

ii) declare the sale deed dated 23.02.2017 registered as Document No.409 of 2017 at SRO, Ashok Nagar in favour of 3rd defendant as null and void and hence not binding on the plaintiff's

iii) grant permanent injunction restraining defendants 1 to 3, their men, agent, servants and

subordinates from in any manner alienating or encumbering the suit property in favour of third parties by way of sale, mortgage, pledge, pawn or otherwise till the realization of partition of suit schedule "A" Property among the legal heirs of deceased K.Jumbulingam.

3.The entire gamut of the plaintiff's case was that the suit schedule property was purchased by his father K.Jumbulingam in the year 1980 in the name of his wife. He has further gone on to state that from the date of purchase, the father, the plaintiff and plaintiff's brother J.Jaikumar as well as the defendants 1 and 2 who are the mother and another brother respectively were enjoying the property as a joint family. The father had died intestate on 06.02.2002 and therefore the legal heirs all are entitled to the share of the property.

4.It is his case that the property was purchased for the benefit of the entire joint family and that the mother who was arrayed as the first respondent did not acquire any title or interest to the suit property but was a mere name lender. He would further contend that the first defendant had been assuring that upon her death the suit properties would devolve equally on all the legal heirs. However contrary to the promise and without the knowledge of the

plaintiff, the second defendant has manipulated the first defendant and got a settlement deed executed in his favour with reference to an extent of 945.75 Sq. ft., out of the total extension of 2037 Sq. ft., by the registered settlement deed. On the strength of this settlement deed the second defendant has also sold the property in favour of the third respondent, who is the revision petitioner herein.

5. It is the case of the plaintiff that he came to know about the transactions only in the year 2017 and when he approached his mother, the mother has feigned ignorance about the said documents namely the settlement deed. He would further contend that though he had requested for partition, the second defendant refused to give the share and therefore he would contend that he was constrained to file the suit for declaration and partition (which is not a relief he has asked for in the suit). He would submit that the defendants were trying to create the encumbrance and therefore he has come forward to the suit. The third defendant on receiving the summons in this suit had come forward with the impugned application to reject the plaint on the ground that it is nothing but an abuse of process of law. The Plaintiff had under valued the suit and not paid the Court fee on the actual market value. Since according to him he is not in a possession of the suit property. He would also raise a plea of collusion amongst the defendants.

6.The said application was resisted by the plaintiff/first respondent by contending that the invocation of the provisions of Order VII Rule (11) of the Code of Civil Procedure was without jurisdiction and that the plaintiff has set forth the necessary cause of action for the suit, therefore the same cannot be rejected without trial.

7.The learned XII Assistant City Civil Judge, Chennai by her order dated 05.12.2017 has rejected the said petition on the following grounds:

(a)That the funds in the purchase has been given by the father and therefore the first defendant was only a name lender and therefore all the legal heirs are entitled to an equal share in the property.

(b)The mother has misused the Fiduciary capacity and created the settlement deed in favour of the second defendant which was null and void and not binding on the plaintiff. The plaintiff has properly valued the suit. The cause of action consists of both questions of fact and law and that the plaintiff being a litigant would not be aware of the relief that he can couch his pleading with. Even assuming that the fee paid is deficient he can be made to make good the difference and the plaint cannot be rejected on that ground. The issue as to whether the mother was a name lender or

not was a point to be decided in the suit by way of trial. Challenging the said order the revision petitioner/third defendant is before this Court.

8. Heard Mr.P.Sunil, learned counsel for the revision petitioner. He would contend that mere reading of the plaint would show the collusion between the parties and also the fact that the plaintiff has no right to the suit property and without there being a right the suit has been filed for a negative declaration. He would rely on the Judgment of this Court

(i) A.Ramanathan vs Sukumran Baskaran & others **reported in 2018 (3) L.W. 241 (D.B)**

(ii) R.N.Shanmunavadivel, S.V.Shanmugam vs R.N.Myiisami & others **reported in 2010 (5) L.W. 185**

(iii) Gian Chand vs V.Krishen Singh & another **reported in AIR 1978 Jammu & Kashmir (D.B)** and

(iv) **A.S.No.77 of 2011** Ilavarasi Ramanathan vs Mehamala **reported in 2018 (5) L.W. 716 (D.B).**

9. Per Contra, the counsel appearing for the respondent Mr.Peranban would contend that the suit property was purchased in the name of the mother only form out of separate funds of the father and therefore the mother cannot set up any individual right to the property and upon the intestate death of the father, the

children of the first defendant and the first defendant would become equally entitled to the share in the suit property.

10. Heard the counsel and perused the materials and records. The suit proceeds on the footing that the property has been purchased in the name of the mother with the mother being a name lender. In effect the plaintiff is pleading a case that the property has been purchased Benami in the name of mother. The suit is clearly barred by Section (4) of the Benami Transactions (Prohibition) Act, 1988. Be that as it may, once the property is acquired in the name of the Hindu woman, there is no question of ancestral property or a joint family property. Therefore the entire plaint which proceeds on the footing that the suit property is a joint family property fails. Section 4 of the Benami Transactions (Prohibition) Act, 1988 reads as follows:

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property

is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this Section shall apply:

(a) Where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) Where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

11. That apart the mother who has executed the settlement deed, who according to the plaintiff had stated that she had not knowingly executed the settlement deed has not chosen to file any proceedings for declaring the settlement deed dated 25.06.2015, registered as Document No.1707 of 2015 on the file of Sub Registrar Office, Ashok Nagar as null and void. Therefore the mother despite knowledge has chosen not to question the execution

of the settlement deed.

12.The suit is nothing but an abuse of process of law. The plaintiff who has no right to the property has chosen to file a suit to declare the settlement deed executed by his mother as null and void by impleading the mother as the defendant and the only basis on which the same has been filed is that the property has been purchased in the name of the mother with the funds of the father and therefore partakes the character of a joint family property. As already stated the provisions of Section (4) of the Benami Transactions (Prohibition) Act, 1988 acts as a fetter to the suit. The Division Bench of this Court in the Judgment in A.Ramanathan vs Sukumran Baskaran & others reported in **2018 (3) L.W. 241 (D.B)** has come down heavily on a collusive suit and ultimately rejected the said suit. The Division Bench of this Court has held as follows:

23.The aforesaid averments would clearly show tht virtually the plaintiffs are conducting the case on behalf of the defendants 2 and 3.

If any fraud or misrepresentation is played by the first defendant against the defendants 2 and 3 and obtained signatures in the partition deed dated 27.12.1973, it is for the same.

Admittedly, the defendants 2 and 3 have not

challenged the said partition deed and that being so, it is not open to the plaintiffs who are being the sons and daughters of defendants 2 and 3 to plead that the said document is not binding on the defendants 2 and 3.

24.It is pertinent to note that in the plaint, nowhere it is stated that why the plaintiffs have arrayed their mothers viz., Mrs.Sethulakshmi Baskaran and Mrs.Aru.Meena, as defendants 2 and it is not the case of the plaintiffs that they were defrauded by the defendants 2 and 3 and it is also not their case that they are not having cordial relationship with their mothers. That being so, instead of adding their mothers as plaintiffs, why they have arrayed them as defendants is not explained. It shows that the suit itself is a collusive one and the same has been filed on behalf of the defendants 2 and 3.

The division bench had observed that the plaintiff had no cause of action for filing the above suit.

13.The facts of the case therein has a direct bearing on facts of this case. Applying the principles laid down by the Honourable Division Bench the order passed by the learned XII Assistant City

Civil Judge, Chennai in I.A.No.12604 of 2017 in O.S.No.3950 of 2017 is, liable to set aside. Consequently, the Civil Revision Petition is allowed and the suit in O.S.No.3950 of 2015 on the file of the XII Assistant City Civil Court, Chennai stands rejected. The connected Civil Miscellaneous Petition is closed. No costs.

20.02.2019

Index : Yes/No

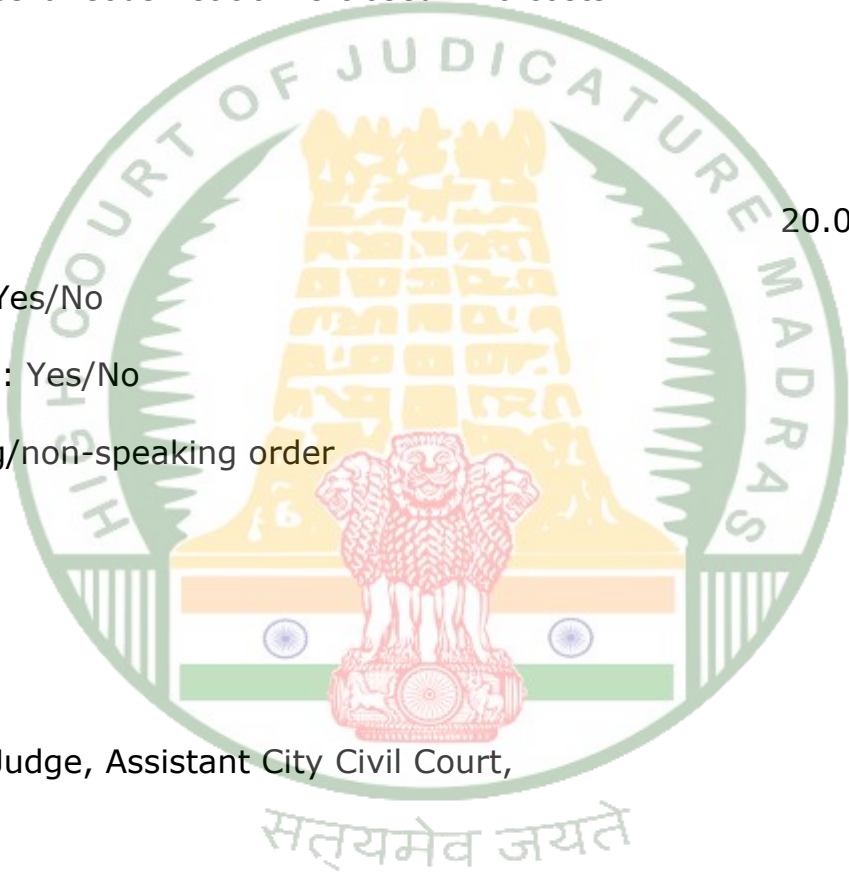
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Speaking/non-speaking order

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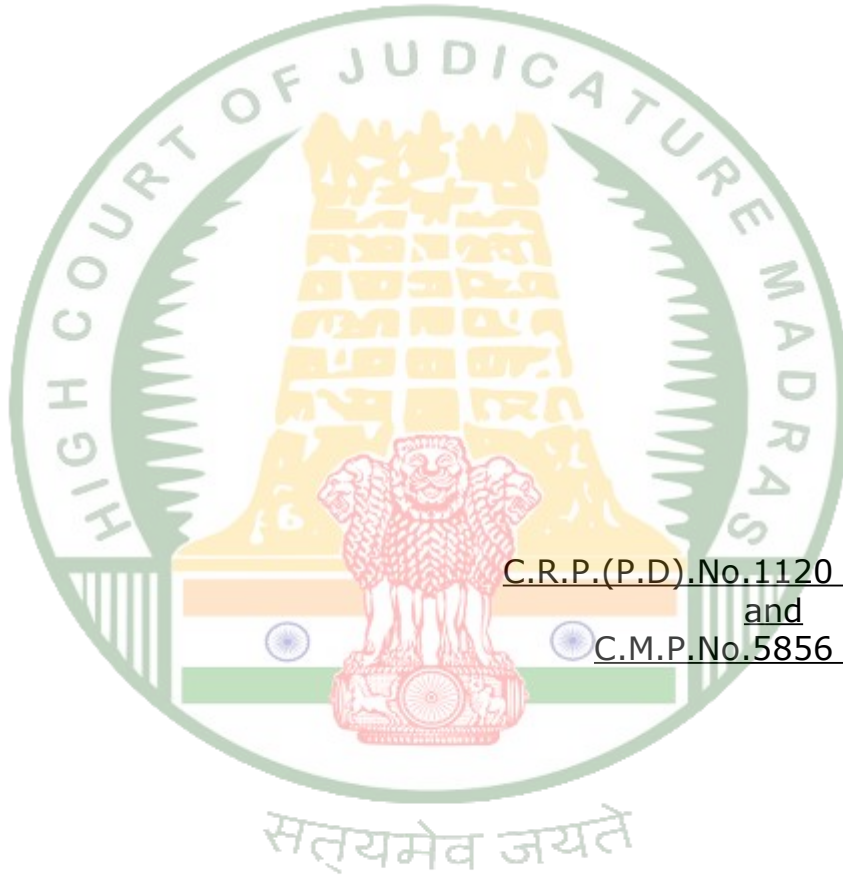
The XII Judge, Assistant City Civil Court,
Chennai.

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital in front of it. The lion capital is set against a background of the Indian national flag's saffron, white, and green horizontal stripes. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a green circle around the central image. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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