

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.07.2018

Delivered on: 11.06.2019

CORAM

THE HONOURABLE THIRU JUSTICE P.VELMURUGAN

C.R.P.(PD) No.1796 of 2018 &
CMP No.10072 of 2018

G.Badrinarayanan

... Petitioner/sixth Defendant

- Vs -

Amritha Srinivasan
W/o.Late G.Srinivasan

.... Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 05.01.2018 made in I.A.No.72 of 2017 in O.S.No.181 of 2016 on the file of III Additional District Judge, Tiruvallur at Poonamallee.

For petitioner : Mr.V.Raghavachari

For respondent : Mr.V.B.Thirupathi Kumar

WEB COPY
ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 05.01.2018 made in I.A.No.72 of 2017 in O.S.No.181 of 2016 on the file of the learned III Additional District Judge, Tiruvallur at Poonamallee.

2. The Revision Petitioner is the sixth defendant and the respondent is the plaintiff in O.S.No.181 of 2016. The respondent/plaintiff has filed the suit before the III Additional District Judge, Tiruvallur at Poonamallee in O.S.No.181 of 2016 against the revision petitioner and others for partition and to pass a preliminary decree in favour of the respondent/plaintiff; further, he claimed the relief that the Settlement Deed dated 13.06.2013 executed by the first defendant therein to and in favour of the revision petitioner herein and registered as Document No.6842/2013 at SRO, Ambattur, pertaining to the suit property is null and void, illegal, non-est in law and not binding on the respondent/plaintiff; further to declare that the deed of cancellation dated 10.02.2014 executed by the first defendant to and in favour of the revision petitioner herein/sixth defendant and registered as document No.1752/2014 at SRO, Ambattur, pertaining to the suit property is null and void, illegal, non-est in law; further to declare that the deed of settlement dated 10.02.2014 executed by the first defendant to and in favour of the defendants 2 to 6 and 8 and registered as document No.1753/2014 at SRO, Ambattur, pertaining to the suit property is null and void, illegal, non-est in law and not binding on the respondent/plaintiff. After service of notices, the revision petitioner herein/sixth defendant and the defendants 3 to 5 & 8 have filed the written statement as early as 31.05.2017. The revision petitioner/sixth defendant in the suit filed the application in I.A.No.72 of 2017 in OS.No.181 of 2016 under Order 7, Rule 11(d) & Section 151 CPC to reject the plaint in O.S.No.181 of 2016 before the III Additional District Judge, Tiruvallur at Poonamallee. The learned III

Additional District Judge, after giving the opportunity, dismissed the petition under order dated on 05.01.2018. Challenging the order of dismissal passed by the learned III Additional District Judge, Tiruvallur at Poonamallee, the petitioner therein/sixth defendant in the suit is before this Court by way of the present Civil Revision Petition.

3. The learned counsel for the civil revision petitioner would submit that the suit property originally owned and possessed by the petitioner/sixth defendant's maternal grandfather M.Govindan. His maternal grandfather executed a registered Will on 31.10.1984 in favour of the petitioner's mother, who is the first defendant in the said suit, bequeathed the suit property and preserving life interest in favour of the petitioner's maternal grandmother G.Thirmamagal. The said Will came into force on 23.11.1993 when his grandfather Govindan died. The life estate holder G.Thirumamagal died on 29.08.2008. The first defendant executed a registered settlement deed on 13.03.2013 settling the suit property in favour the petitioner and also handed over the possession of the same. The said Settlement Deed is also duly attested one and acted upon. The said Settlement Deed is unconditional and irrevocable one. The petitioner also mutated the revenue records and paid taxes to the Government Authorities. The mother of the petitioner/first defendant, at the instigation of the respondent/plaintiff and other sisters of this defendant, has cancelled the said Settlement Deed unilaterally by executing a registered cancellation deed dated 10.02.2014 and the first defendant has executed another

settlement deed on 10.02.2014 in favour of the revision petitioner/sixth defendant and other defendants. The same is not valid and the petitioner came to know the said cancellation, he filed WP No.24902 of 2016 seeking direction to the Joint Sub Registrar, Ambattur to remove the entries regarding the cancellation of the said settlement deed and also the registered Settlement Deed dated 10.02.2014 executed by the first defendant and the same is pending before this Court. The respondent/plaintiff is not having any right over the suit property, There is no Hindu Undivided Family and the father of the revision petitioner/plaintiff's husband was not the Kartha of the same. Therefore, he filed the petition to reject the plaint. The learned III Additional District Judge failed to consider the fact that the registered Sale Deed executed by the first defendant/mother of the petitioner herein is unconditional and irrevocable and the same cannot be canceled and therefore, dismissed the petition, which warrants interference.

4. The learned counsel appearing for the respondent/plaintiff would submit that the suit property originally belong to the respondent's husbands's grandfather viz., Govindan, who purchased the property from the Ambattur Government Servants Co-Operative Building Society, during the year 1954 out of his ancestral nucleus. The first defendant's father executed a settlement deed dated 12.07.1981 in favour of the first defendant's sister one S.Vedhavalli in respect of back side portion of the suit property. Likewise the first defendant's father executed a Will dated 31.10.1984, by which, bequeathing the suit property in favour of first

defendant with reserving life interest for him and his wife G.Thirumamagal. The father of the first defendant M.Govindan died on 23.11.1993 and G.Thirumamagal died on 29.09.2008. Thus, the plaintiff and defendants 1 to 7 became absolute owners of the suit property by way of inheritance. The plaintiff's husband is only taking care of the entire family as the Kartha of Hindu undivided family subsequent to the demise of his father. The first defendant resided along with the petitioner/sixth defendant in the property belonging to the sixth defendant from August 2009 to May 2013. Thereafter, the first and sixth defendants were residing in the rental house since the revision petitioner sold his house. The revision petitioner/sixth defendant moved forcibly into the suit premises during June 2014. The possession of the respondent/plaintiff and defendants 1 to 8 are constructive possession. Taking advantage of old age of the first defendant, the petitioner herein manipulated the settlement deed dated 13.06.2013 in his favour by suppressing the co-ownership of the suit property. Therefore, the alleged Settlement Deed dated 13.06.2013 itself is nullity in law and not binding on the respondent/plaintiff and defendants 1 to 5, 7 & 8. The first defendant/mother of the revision petitioner herein cancelled the alleged settlement under registered cancellation deed dated 10.02.2014. Hence, the cancellation deed and the alleged settlement deed dated 10.02.2014 executed by the first defendant are also liable to be set aside as null and void. The respondent/plaintiff came to know about the second settlement deed dated 10.02.2014 in respect of the suit property and approached the defendants 1 to 8 for amicable partition. The settlement deed

dated 13.06.2013 itself is under challenge in the above suit and also the subsequent cancellation deed dated 10.02.2014 and subsequent settlement deed dated 10.02.2014 in respect of suit property are under challenge in the above suit, the pendency of WP.No.24902/2016 is nothing to do with the above suit, which is filed by comprehensive relief of partition, declarations and for permanent injunction in respect of the suit property. The respondent/plaintiff and defendants 1 to 8 are having shares in the suit property. The petitioner has not pleaded as to how the suit barred by any law. The respondent/plaintiff has pleaded that the property is ancestral property and all the legal heirs of Govindan are entitled to the share. The settlement made by the mother of the petitioner in favour of the petitioner is null and void. It was pleaded that the petitioner herein manipulated the settlement deed dated 13.06.2013 in his favour. All these averments can be decided only after trial. The learned III Additional District Judge, rightly dismissed the petition filed by the revision petitioner, which warrants no interference.

5. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent as also perused the material on records.

6. It is the settled proposition that while deciding the petition under Order 7 Rule 11 of CPC, the Court has to see the averments made in the plaint, but not defence taken by the defendant in the written statement. In this case, admittedly, the respondent/plaintiff filed a suit in OS.No.181 of 2016 and the same discloses

cause of action and suit not barred by any law. The questions as to whether the suit is maintainable?, whether the property was purchased from the ancestral nucleus? and whether the mother of the petitioner is entitled to execute the settlement deed in respect of the entire suit property in favour of the petitioner/sixth defendant, can be decided only after recording the evidence but, not at this stage. This Court does not find any illegality or perversity in the order passed by the learned III Additional District Judge, Tiruvallur at Poonamallee and the civil revision petition is liable to be dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

11.06.2019

Index: Yes/no

Speaking/Non-Speaking Order

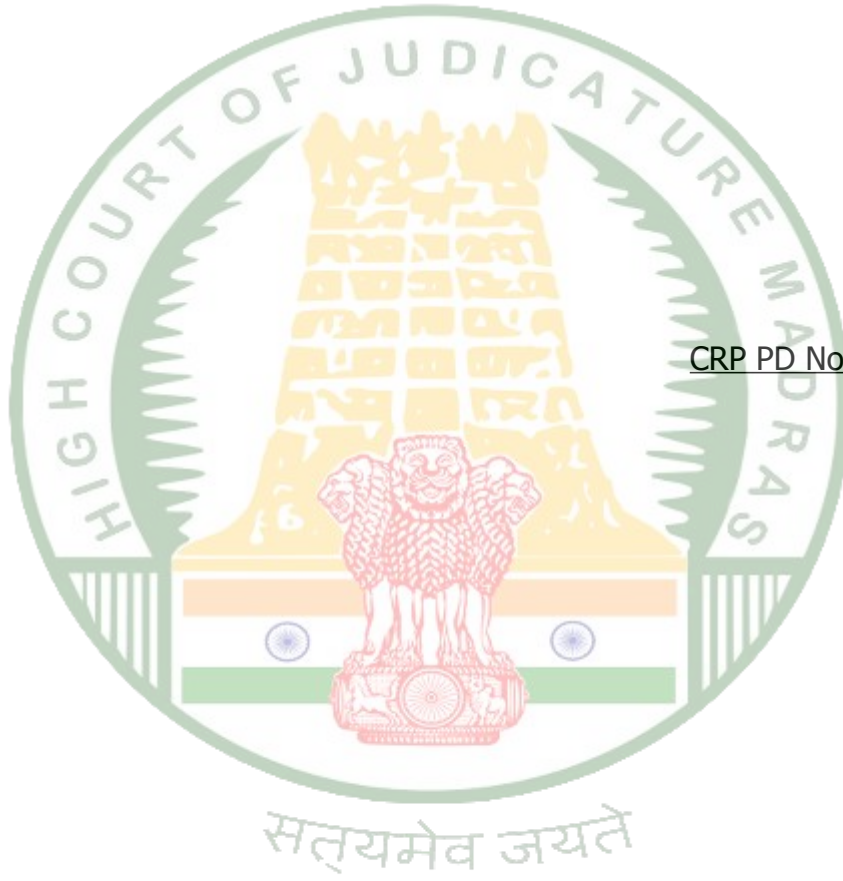
KMI

To
The III Additional District Judge,
Tiruvallur at Poonamallee.

WEB COPY

P.VELMURUGAN, J.

KMI



CRP PD No.1796 of 2018

11.06.2019

WEB COPY