

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 20TH DAY OF SEPTEMBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A. No.5634 of 2019

in

E.P.NO.176 of 2018

1. Mrs.V.M.Sumathy,
W/o.LATE MR.P.Vannimuthu,
BOTH AT NEW NO.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014.

.... PETITIONER/3RD Defendants

-Vs-

1. R.Boopathy,
S/o.Late V.Raman,
New No.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014.

... Respondent/Plaintiff

2. R.Balakrishnan,
S/o. Late V.Raman,
New No.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014.

..Respondent/2nd Defendant

3. Soundarammal
W/o.Late V.Raman
New No.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014.

...Respondent/1st Defendant

A.No.4717,4358,4359 of 2019
in E.P.No.176 of 2018
in C.S.No.793 of 2007

R.Balakrishnan,
S/o. Late V.Raman,
New No.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014.

..Petitioner in

A.Nos.4717, 4358 and 4359 of 2019 -
2nd Respondent/2nd Defendant

1. Mrs.V.M.Sumathy,
W/o.LATE MR.P.Vannimuthu,
BOTH AT NEW NO.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014. ..1st Respondent in
Appln.Nos.4717, 4358, 4359/2019
... PETITIONER/3RD Defendants

2. Mr.R.Boopathy,
S/o.Late V.Raman,
New No.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014. ..2nd Respondent in
Appln.Nos.4717, 4358, 4359/2019
1st Respondent/Plaintiff

3. Mrs.Soundarammal
W/o.Late V.Raman
New No.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014. ..3rd Respondent in
Appln.Nos.4717, 4358, 4359/2019
3rd Respondent/1st Defendant

A.No.5634 of 2019:

R.Balakrishnan,
S/o. Late V.Raman,
New No.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014. ..Petitioner

-VS-

1. Mrs.V.M.Sumathy,
W/o.LATE MR.P.Vannimuthu,
BOTH AT NEW NO.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014.

2. Mr.R.Boopathy,
S/o.Late V.Raman,
New No.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014.

3. Mrs.Soundarammal
W/o.Late V.Raman
New No.3, Old No.2,
Chella Pilliar Koil Street,
Royapettah, Chennai-600 014.

..Respondents

Application praying that this Hon'ble Court be pleased :

To allow the instant application (Appeal) against the Common order dated 30/07/2019 passed in A.Nos.4717, 4358 and 4359 of 2019 in E.P.No.176 of 2018 by the Learned Master Court.

To stay the Common order passed in A.Nos.4717, 4358 and 4359 of 2019 in E.P.No.176 of 2018 by the Learned Master Court and the E.P. Proceedings in E.P.No.176 of 2018 till the disposal of the appeal by the Hon'ble High Court.

This application coming on this day before this court for hearing the court made the following order:-

This application has been filed challenging the common order passed in A.Nos.4717, 4358 and 4359 of 2019 in E.P.No.176 of 2018, dated 30.07.2019.

2. The second respondent instituted a suit for partition in C.S.No.793 of 2007 against his mother, brother and sister, claiming 1/3 share and for other reliefs. The dispute between the parties had been amicably settled in a Lok Adalat, held on 6th February 2008, by which, the plaintiff and the second defendant had agreed to take item No.2 of the plaint schedule property, while the defendants 1 and 3 were allotted equal share in item No.1 of the plaint schedule property. The third defendant in the suit filed the Execution Petition for delivery of possession of the property. It is seen that the first defendant by a registered Deed of Settlement, dated 04.05.2018, settled her right in the 1st item in favour of her daughter, the third defendant.

3. The second defendant filed the application Nos.4717, 4358 and 4359 of 2019 in the Execution Petition under Section 47 of the Civil Procedure Code, stay the Execution Petition and for issuing summons to the first defendant to give evidence in respect of the Settlement Deed, dated 04.05.2018. The learned Master, by a common order, dismissed all the three applications. Challenging the same, the present application has been filed.

4.Mr.T.C.S.Raja Chockalingam, learned counsel appearing for the applicant submitted that the applicant is residing in the Item No.1 of the suit schedule property. The mother of the applicant, namely, the first defendant is an illiterate and she executed a settlement deed in favour of the third defendant, who is mentally ill and hence, the award passed before the Lok Adalat could not be executed.

5. The applicant herein objected execution of the Decree, mainly contending that the Execution Petition has been filed by a mentally ill person and hence, she was not in a position to accept the settlement deed in her favour and the settlor is an illiterate lady.

6. In the instant case, a perusal of the Award passed in C.S.No.793 of 2007 would reveal that the first and third defendants, who are mother and daughter are entitled for item No.1 of the suit schedule property, and the second item of the property was allotted in favour of the plaintiff and the second defendant, who are brothers, and it has reached finality. As per the Award, the applicant-second defendant and the first respondent-plaintiff, do not have any right over item No.1 of the suit property. Therefore, they have no *locus standi* to challenge the Settlement Deed, dated 04.05.2018, executed by the mother in favour of her daughter and the applications were filed before the learned Master only with an ulterior motive. The learned Master, rightly dismissed the applications and I do not find any reason to interfere with the same. Accordingly, the application is dismissed.

Sd/.M.K.K.S.J.

20.09.2019

//Certified to be a true copy//

Dated this the day of 2019.
SU/26.09.2019

COURT OFFICER