

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

C.R.P.(PD).No.4793 of 2017

and

C.M.P.No.22523 of 2017

1.Parveen Sultana
2.Malika

...Petitioners

Vs.

1.S.Mohammed Abbas
2.Papitha Sultana
3.M.A.Shajahan @ M.Ahamed Shahjahan
4.S.Sharmila
5.P.Pandi Durai

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to strike of the plaint in O.S.No.372 of 2017 on the file of the I Additional District Munsif Court, Salem.

For Petitioners : M/s.Sarvabhauman Associates

For Respondents : No appearance

ORDER

The Civil Revision petition has been filed to strike of the suit in O.S.No.372 of 2017 filed by the plaintiff/1st respondent herein, seeking a declaration to declare the decree in O.S.No.106/2007 as null and void and also to declare the sale agreement dated 13.02.2009 as void.

2. The brief facts, in a nutshell, are thus:-

The Suit in O.S.No.372 of 2017 has been filed to claim the right on the basis of oral gift deed (Hiba) said to have been executed by One Mehrunissa/grandmother in favour of the plaintiff/1st respondent herein. It is alleged that the parents have not acted to protect the property of the plaintiff. Hence, he sought to assail the decree passed in O.S.No.106 of 2007 and also the agreement dated 13.02.2009.

3. Heard the learned counsel for the revision petitioners.

4. The background in filing the suit is relevant to find out whether the suit is an abuse of process of law or barred by any other law to strike it out from the file. Originally the suit in O.S.No.106 of 2007 was filed by one Papitha Sultana and Shahjahan, who are the parents of the plaintiff/1st respondent herein, as against one Parveen Sultana and Malika, who are the sisters of Papitha Sultana and the above suit was filed for partition of the property. It appears that in the suit, a preliminary decree was passed, thereafter, the plaintiff and the defendants filed two applications in I.A.Nos.919 of 2009 and 294 of 2009 before the I Additional District Munsif, Salem, for passing final decree. In the above said applications, an Advocate Commissioner was appointed by the aforesaid Court on 04.01.2010. During the pendency of the above applications, the plaintiff, who was then a minor filed applications in I.A.Nos.112 of 2011 and 114 of 2011, through his Aunt viz., Sharmila and the I Additional District Munsif, Salem had

dismissed the above applications on 19.01.2012. Thereafter, the plaintiff, has filed another application in I.A.No.265 of 2012, to re-open the suit and the trial Court had allowed the application on 18.11.2014. Assailing the said order, the defendants 2 and 3/petitioners herein, have filed a petition in C.R.P.(P.D).No.270 of 2015 and this Court holding that it is a classic case of abuse of process of law, at the instance of a practicing lawyer to defeat the rights of the legal representatives of the common ancestors and to grab the property by making a false plea of Hiba in favour of his son, allowed the C.R.P(PD).No.270 of 2015 on 21.11.2016, by imposing a cost of Rs.25,000/-.

5. It is relevant to extract the order of this Court in C.R.P.(P.D.).No.270 of 2015, dated 21.11.2016, wherein at paragraphs Nos.9,10,11,14 and 19, it have been averred as follows :

9.The third respondent filed another suit in O.S.No.28 of 2011 through Mrs.S.Sharmila, next friend to declare the oral Hiba valid and a declaration that the preliminary decree dated 23.02.2007 in O.S.No.106 of 2007 is not binding on him. The third respondent wanted a decree of title in favour of the first respondent. The petitioners filed written statement and opposed the said suit. The suit was thereafter dismissed as not pressed on 01.12.2014. The decree has become final.

10. The first respondent once again filed a petition through next friend Sharmila in I.A.No.265 of 2013 in O.S.No.106 of 2007 to reopen the preliminary decree dated 23.02.2007 in O.S.No.106 of 2007. The learned Additional District Munsif, notwithstanding the fact that earlier proceedings have become final allowed the application in I.A.No.265 of 2013 by order dated 18.11.2014 and reopened the preliminary decree proceedings.

11. Thereafter, very strangely, respondents 2 and 3 who were the plaintiffs in O.S.No.106 of 2007 and petitioners in the final decree petition in I.A.No.919 of 2009 filed a memo before the

Trial Court not pressing the suit in O.S.No.106 of 2007. The petitioners filed a memo of objection and opposed the prayer for withdrawal of suit, after passing a preliminary decree. The petitioners filed a memo to transpose them as plaintiffs in the suit in O.S.No.106 of 2007 in view of the fraudulent action taken by the respondents 2 and 3 to withdraw the suit, after restoring the preliminary decree petition by filing application through the first respondent.

14. The legal brain of the third respondent worked swiftly and the same resulted in filing the interlocutory application by the first respondent through the next friend. Since biological parents are alive, it is really a wonder as to how a next friend can maintain an application on behalf of the minor. Unfortunately, this aspect was not considered by the learned Additional District Munsif, Salem.

19. The documents available on record clearly shows that the third respondent is resorting to back seat driving to grab the property. The course of conduct adopted by him clearly shows that he wanted to deny the petitioners their due share. The learned I Additional District Munsif, unfortunately ignored the fundamental principles of law that in case an adverse order has been passed against a party in the very same subject matter, it would not be possible for him to file similar application for the very same relief later in the very same suit."

6. In the meanwhile, the plaintiff has filed a suit in O.S.No.28 of 2011, seeking the very same relief and also seeking a declaration of the agreement dated 13.02.2009 as void. It is to be noted that in above C.R.P(PD).No.270 of 2015, this Court taken note of the fact that how the third respondent, who is said to be a practicing lawyer, by making a false plea of Hiba in favour of his son/first respondent attempted to defeat the rights of legal representatives. This Court gone down heavily on the third respondent, for the false plea of Hiba and imposed cost. Thereafter, the plaintiff, who attained majority has filed a suit in O.S.No.372 of 2017 claiming the same relief to declare the preliminary decree

originally passed and subsequent agreement based on such decree are not binding him. The plaintiff mainly relied upon the oral Hiba in the present suit also, which is found to be forged by this Court in the earlier occasion. It is also to be noted that in the C.R.P, the present plaintiff is also one of the parties. When this Court has found that the oral Hiba is nothing, but concocted, the allegations made only to non-suit the preliminary decree. When the plaintiff himself is a party and the Civil Revision petition reached its finality, the plaintiff is barred from laying a claim on the same allegation to non-suit the decree validly granted in O.S.No.106 of 2007. It is also yet another fact to be noted that O.S.No.28 of 2011 filed by the same plaintiff claiming the same right on the basis of the alleged Hiba. The above suit was dismissed as not pressed, when the suit was already withdrawn any relief sought for by the plaintiff by filing the suit on similar cause of action, without obtaining leave to file a fresh suit, such suit is not maintainable.

7. Therefore, he is precluded by law to file a similar suit in the same cause of action namely Hiba. He is also precluded under Order 23 Rule 1 of C.P.C. as already discussed in C.R.P before this Court, it has reached its finality wherein the plaintiff is one of the parties, this Court categorically held that the allegations with regard to the oral gift (Hiba) is nothing but a story invented by the father of the plaintiff. When this Court also held that the proceedings itself is nothing but an abuse of process of law it is not maintainable. Once again, the plaintiff cannot be permitted to re-agitate the same matter by filing a fresh suit.

When he himself as a party to the proceedings and suffered orders and the order also reached finality, he cannot re-litigate the issue by filing a fresh suit.

8. Considering the facts narrated above, this Court finds that the suit is nothing but an abuse of process of law and it cannot be maintained and liable to be struck off on the file of the I Additional District Munsif Court, Salem. Accordingly, the same is struck off with cost of Rs.10,000/-. Consequently, connected miscellaneous petition is closed.

12.03.2019

Internet : Yes / No
Index: Yes / No
Speaking Order / Non-Speaking Order
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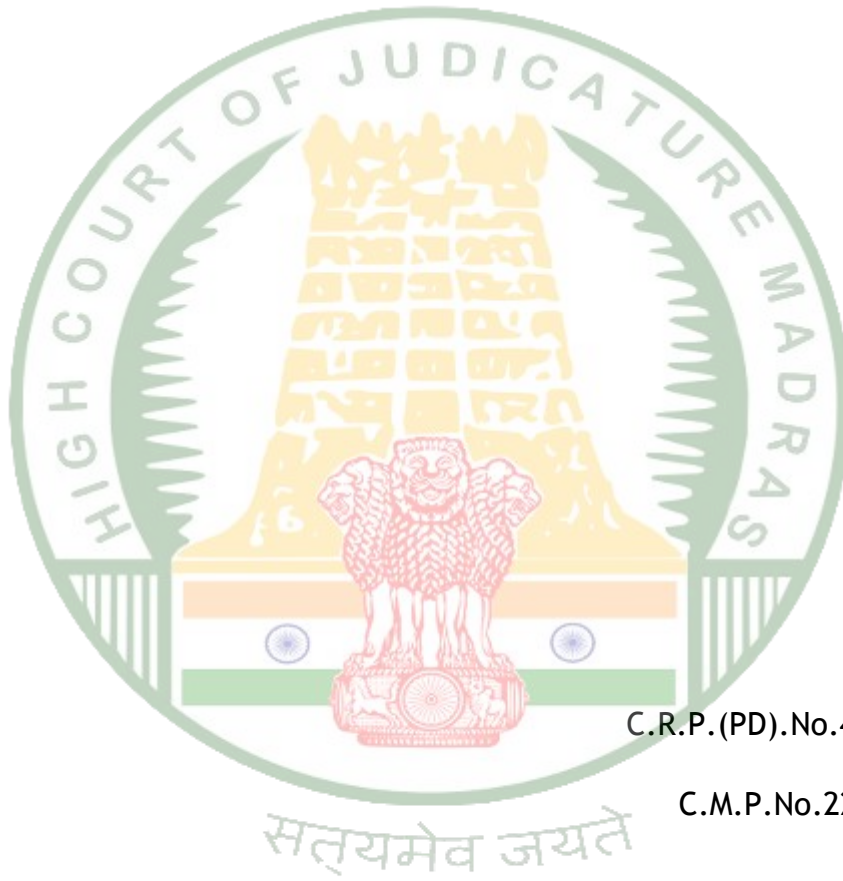
To

The I Additional District Munsif Court,
Salem.

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N.SATHISH KUMAR, J.

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