



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:26.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.1924 of 2012 (PD)

and

M.P. (MD) .No.2 of 2012

Chellammal .. Petitioner / 2nd Respondent/ 2nd Defendant
Vs.

1.Jegatheesan .. 1st Respondent / Petitioner / 1st Defendant
2.Glady Esther Rani .. 2nd Respondent / 1st Petitioner / Plaintiff

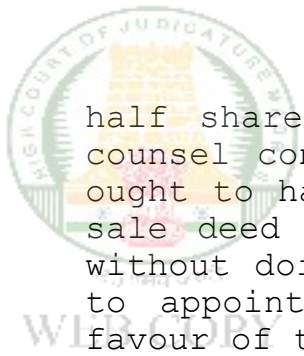
PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 25.08.2012 passed in I.A.No.14 of 2012 in O.S.No.42 of 2010, on the file of the IV Additional District Judge (Fast Track Court No.2). Tirunelveli.

For Petitioner : Mr.G.Venugopal
For R-1 : Mr.V.Kannan
For R-2 : No Appearance

O R D E R

This Civil Revision Petition has been filed against the order passed by the Court below appointing an Advocate Commissioner for inspecting the property and to file a report before the Court below along with the plan in order to enable the Court to allot the share that has been allotted by means of a preliminary decree that has already been passed in the suit.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the second defendant in the suit and a preliminary decree was passed in favour of the plaintiff, allotting her half share in the property. Thereafter, the first defendant had filed a petition for passing the supplemental preliminary decree seeking for half share in the property and in the said application, the Court below has proceeded to appoint an Advocate Commissioner. The learned counsel submitted that the petitioner has no objection with regard to the half share that was allotted to the plaintiff, since the plaintiff was entitled for half share in the property. The learned counsel submitted that the only dispute in this case is with regard to the sale deed that is said to have been executed by the petitioner in favour of the first defendant. The petitioner is challenging this sale deed on the ground that it was obtained by undue influence and fraud and the petitioner never intended to make such sale to the first defendant. However, the first defendant has proceeded to straight away seek for



half share in the property based on this sale deed. The learned counsel concluded his arguments by submitting that the Court below ought to have decided the issue regarding validity of the so-called sale deed that was executed in favour of the first defendant and without doing the same, the Court below has straight away proceeded to appoint an Advocate Commissioner for allotting half share in favour of the first defendant.

3. The learned counsel appearing for the petitioner further submitted that the petitioner has already filed a suit in O.S.No.174 of 2012, before the Principal Sub Court, Tirunelveli, challenging the sale deed that is said to have been executed in favour of the first defendant and to declare the same as null and void. This suit was also dismissed by judgment and decree dated 13.10.2015 and an Appeal has also been filed with delay.

4. The learned counsel appearing on behalf of the first respondent submitted that as on date, the first respondent is the owner of the property with regard to half share in the suit property. The learned counsel submitted that till the sale deed is set aside in the manner known to law, the petitioner cannot claim any right in the property. Therefore, the learned counsel submitted that there is no requirement for the Court below to pass a preliminary decree and the Court below was perfectly right in appointing an Advocate Commissioner in order to allot the remaining half share in favour of the first defendant.

5. In the considered view of this Court, the present Civil Revision Petition is not maintainable, since the petitioner ought to have filed a regular Appeal as against the order passed under Order 20 Rule 18 of the Code of Civil Procedure. Where an effective alternative remedy was available to the petitioner by way of an Appeal, this Court cannot exercise its jurisdiction under Article 227 of the Constitution of India. The law on this issue is well settled. In view of the above, this Civil Revision Petition stands dismissed and liberty is granted to the petitioner to challenge the order passed by the Court below under Order 20 Rule 18 of the Code of Civil Procedure by filing a regular Appeal. Time spent by the petitioner before this Court shall be taken into consideration under Section 14 of the Limitation Act while the concerned Court deals with the application to condone the delay in filing the Appeal. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (records)

// True Copy //

Sub Assistant Registrar(CS)



tsg

To

1.The IV Additional District Judge, Fast Track Court No.II,
Tirunelveli.

2.The Record Keeper, VR Section(2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.M.P. SENTHIL, Advocate (SR-101840[F] dated 27/11/2019)

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MK (18.12.2019) 3P 5C