



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.03.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.1556 of 2015

D.Thiyagarajan

.. Petitioner/1st Respondent/Plaintiff

Vs.

1.J.Ramadevi

...1st Respondent/Petitioner/3rd Party

2.V.Jayakumar

3.R.Neelakandan

... Respondents/Respondents 2 and 3/
Defendants 1 and 2

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order in I.A.No.26 of 2015 in O.S.No.68 of 2011 dated 01.04.2015 on the file of the learned II Additional District Court and Sessions Judge, Thanjavur.

For Petitioner

: Mr.R.Rajaraman

For 1st Respondent

: Mr.M.C.Samy

For 3rd Respondent

: Mr.P.Vadivel

For 2nd Respondent

: No Appearance

ORDER

Heard the learned counsel appearing on either side.

2.This petition has been filed against the order passed in I.A.No.26 of 2015 in O.S.No.68 of 2011 dated 01.04.2015 on the file of the learned II Additional District Court and Sessions Judge, Thanjavur.

3.The petitioner herein is the plaintiff, the first respondent herein is a third party who is the wife of the second respondent and the respondents 2 and 3 herein are the defendants 1 and 2 in the suit. The petitioner filed a suit in O.S.No.68 of 2011 to declare the sale deed dated 29.12.2010 as null and void. In that suit, the first respondent herein has filed a petition in I.A.No.26 of 2015 to implead herself as a party stating that her husband is having mental illness. That petition was allowed by the trial Court and as against the order, the petitioner herein has filed the present petition.

4.On the side of the petitioner, it is stated that the petitioner filed this suit in O.S.No.68 of 2011 for declaring the

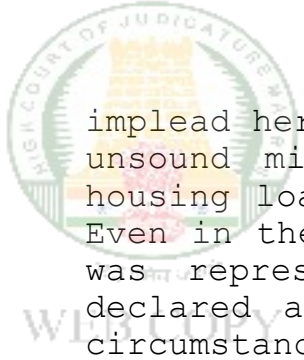


sale deed executed by the second respondent in favour of the third respondent as null and void. It is stated that the second respondent is a Government servant who retired from service in the year 2003 and that the husband of the first respondent has filed vakalat in this case and that the second respondent has obtained a housing loan and he has paid all the dues and he got the sale certificate and he was served with notice and he sent reply notice and that he attended the Sub Registrar office and made an entry before the Registrar and that he executed a registered agreement and then he executed two sale deeds on 19.03.2009 and on 29.12.2010 respectively. This petition was filed by the petitioner only in the year 2015. Whereas the first respondent has filed a petition stating that her husband was mentally ill from 1996 that the petition was allowed by the trial Court only on the basis of apprehension. It is stated that until the filing of the suit, the petitioner has not taken any steps to declare her husband as a person of unsound mind under the Mental Health Act and only in the year 2014, she is stated to have filed the petition before the learned Principal District Judge, Thanjavur.

5. On the side of the first respondent, it is stated that she has filed I.A. petition to implead herself as a party in the petition stating that the second respondent is incompetent and that the second respondent has become a person of unsound mind in the beginning of the year 1996 and that he is incapable of managing his affairs and that the petitioner and the third respondent created fraudulent documents and they filed title suits in O.S.No.39 of 2011 and O.S.No.68 of 2011 and that she has filed a petition in I.A.No.39 of 2014 before the Principal District Court, Tanjore to appoint herself as the guardian of the second respondent and the same is still pending and that the second respondent is set as exparte and that she has to be impleaded in the suit and prayed the revision petition to be dismissed.

6. On the side of the third respondent, it is stated that the trial Court has made an observation that the counsel for the second respondent is on record and that the third respondent filed a counter stating that the second respondent is hale and healthy and that the first respondent can be impleaded only after the second respondent is declared as a person of unsound mind and not until then.

7. It is seen that the husband of the first respondent was a Government servant who retired in the year 2003 and the disputed sale deed is of the year 2010. It is seen that the petitioner filed a suit against the respondents 2 and 3 to declare the sale deed 29.12.2010 executed by the second respondent in favour of the third respondent as null and void. The case of the petitioner is that on 23.10.1998, the petitioner entered into an unregistered agreement of sale with the first defendant and that on 16.12.1998, the first defendant and the plaintiff entered into registered agreement, and on 19.03.2009, the power agent of the first defendant executed a sale deed in favour of plaintiff. The first respondent want to



implead herself in the suit stating that the second respondent is of unsound mind. It is seen that the second respondent obtained a housing loan and he repaid the same. He was in service up to 2003. Even in the suit, the second respondent has filed a vakalath and he was represented by his counsel. The first respondent was not declared as the guardian of the second respondent. In the above circumstances, there is no necessity to implead the first respondent in the suit at this stage. If at all the first respondent is able to obtain an order in I.A.No.39 of 2014 before the learned Principal District Judge, Thanjavur, then she is at liberty to file a fresh petition to implead herself.

8.At this stage, there is no necessity to implead the first respondent. Hence, the order passed in I.A.No.26 of 2015 in O.S.No.68 of 2011 dated 01.04.2015 on the file of the learned II Additional District Court and Sessions Judge, Thanjavur is set aside and the Civil Revision Petition is allowed. No Costs.

Sd/-

Assistant Registrar (AD-II)

/ True Copy /

Sub Assistant Registrar(CS-)

Mrn
To

The II Additional District Court and Sessions Judge,
Thanjavur.

+1 CC to M/s.R.RAJARAMAN, Advocate (SR-64739[F] dated 02/05/2019)

C.R.P. (PD) (MD) No.1556 of 2015

30.04.2019

ES/21.06.2019/3P/3C