

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

**C.R.P (PD) No.438 of 2019
and CMP Nos.9649 & 3041 of 2019**

R.Natarajan

... Petitioner

Vs.

1.T.N.Rathinasabapathy
2.R.Murugesan
3.K.Suganthi

... Respondents

Prayer - This Civil revision has been filed under Article 227 of the Constitution of India to set aside the order dated 30.11.2018 made in I.A.No.747 of 2018 in O.S.No.240 of 2017, on the file of the learned III Additional District and Sessions Judge, Coimbatore.

For petitioner : Mr. D.Ravichander

For Respondents : Mr.T.Mathivanan for R1 & R2
Mr.S.Thangavel for R3

ORDER

The Civil Revision Petition has been filed against the order dismissing the petitioner's application filed under Order VI Rule 17 of CPC to include the property belongs to the 3rd respondent herein, in the suit schedule.

2. The petitioner/ plaintiff, has filed a suit in O.S.No.240 of 2017 seeking for declaration, declaring that the settlement deeds dated 15.03.2017 and 08.03.2017 said to have been executed by the 1st defendant, who is the father of the petitioner as well as the 2nd and 3rd respondents herein as null and void and consequently, seeking for partition of the suit schedule properties, allotting 1/4 share to the petitioner and also for consequential permanent injunction restraining the 2nd defendant and the plaintiff from alienating the suit schedule properties.

3. The petitioner/plaintiff, has filed the aforesaid suit on the ground that, the suit schedule properties have been purchased by the father, who is the 1st defendant in the suit, from out of the income of joint family properties and all the suit schedule properties are joint family properties. The 1st defendant's father had executed a settlement deed on 08.03.2017 in favour of the petitioner/plaintiff in respect of the suit 2nd schedule property. Eventhough the petitioner is one of the attesting witness in the settlement deed dated 08.03.2017 without disclosing the contention of the document, the settlement deed has been registered, wherein no due share was given to the petitioner.

4. Further, it is stated that the 2nd respondent/2nd defendant taking advantage of the 1st defendant's old age and illness, took the 1st defendant to the Registrar office and got the settlement deed executed in his favour on 15.03.2017 in respect of suit 1st schedule property. In the above circumstances, the petitioner/plaintiff wants to set aside the settlement deeds dated 08.03.2017 and 15.03.2017 as null and void and seeks for consequential partition and permanent injunction.

5. Pending suit, the petitioner has filed the present application under Order VI Rule 17 of CPC to include the property stands in the name of the 3rd respondent on the ground that the aforesaid property has also been purchased by the father in the name of the 3rd respondent, from and out of the income of the joint family properties. At the time of filing of the suit, due to oversight, the aforesaid property has not been included in the suit schedule. The application has been opposed by the 3rd respondent, on the ground that, the aforesaid property is a self-acquired property of the 3rd respondent. The 3rd respondent was married to one Kesavan in the year 1978, and settled at Coimbatore; the aforesaid property has been purchased by her

husband in the name of the 3rd respondent. Thereafter, she has also constructed a building therein from and out of her own funds. The aforesaid property has nothing to do with the joint family properties of the plaintiff and it is an individual property of 3rd respondent. Considering the materials available on record, the trial Court has dismissed the application holding that admittedly, the property stands in the name of the 3rd respondent and there is no material available to show that the property has been purchased from and out of the income of the joint family properties. The trial Court has also held that the 3rd respondent got married in the year 1978 and the property has been purchased in the year 1985, i.e after 7 years of her marriage and she was in possession of the same for nearly 33 years and she has also put up construction and in view of Section 14(1) of the Hindi Succession Act, it is an absolute property of the 3rd respondent and the petitioner cannot claim any right in the property of the 3rd respondent. Now, challenging the same, the present revision has been filed.

6. The learned counsel for the petitioner would contend that eventhough the property stands in the name of the 3rd

respondent, it has been purchased from and out of the income of joint family properties in the year 1985 and she has been in possession of the same. Whether the property has been purchased from and out of the income of the joint family properties or not has to be proved only during the trial and in the amendment petition, the Court should not insist upon the petitioner to produce evidence to show that the property has been purchased from and out of the joint family properties. Without considering those aspects, the trial Court has mechanically dismissed the application.

7. Per contra, Mr.S.Thangavel, learned counsel appearing on behalf of the 3rd respondent would contend that, the 3rd respondent got married in the year 1978, and she was separated from her joint family and residing in the matrimonial home. In the year 1985, she had purchased a property from and out of the income of her husband and thereafter, she has also put up a construction and residing therein. After 33 years, the petitioner cannot claim that the property has been purchased from the income of the joint family properties. That apart, the suit in O.S.No.240 of 2017 has been filed to set aside the settlement

deeds said to have been executed by the 1st defendant and admittedly, the property stands in the name of the 3rd respondent has not been included in the aforesaid settlement deeds. Only it is an afterthought, the present application has been filed and the trial Court has mechanically rejected the application.

8. I have considered the submissions made on either side and perused the materials available on records carefully.

9. The suit in O.S.No.240 of 2017 has been filed by the petitioner/plaintiff to set aside the settlement deeds dated 08.03.2017 and 15.03.2017 said to have been executed by the 1st defendant, who is the father of the petitioner as well as the 2nd and 3rd respondents. According to the petitioner, he is one of the attesting witness to the settlement deed dated 08.03.2017 and he is not aware of the contents of the settlement deed. He has also sought for consequential partition of the suit schedule property allotting 1/4 share to the petitioner. Admittedly, the property sought to be included in the suit has not been included in the settlement deeds and this property stands in the name of the 3rd respondent. It is an admitted fact that the 3rd respondent

was separated from the joint family and she has purchased a property in the year 1985. Since the suit has been filed to set aside the settlement deeds dated 08.03.2017 and 15.03.2017 said to have been executed by the father and after setting aside the settlement deeds seeks to divide the property into four equal shares and allot a share to the petitioner and the property has not been included in the settlement deed and the property stands in the name of the 3rd respondent, the plaintiff cannot sought any share in the present suit. The trial Court after considering the entire materials dismissed the aforesaid application. There is no illegality or infirmity in the orders passed by the Court below and I find no merit in this revision petition.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Internet : Yes/No

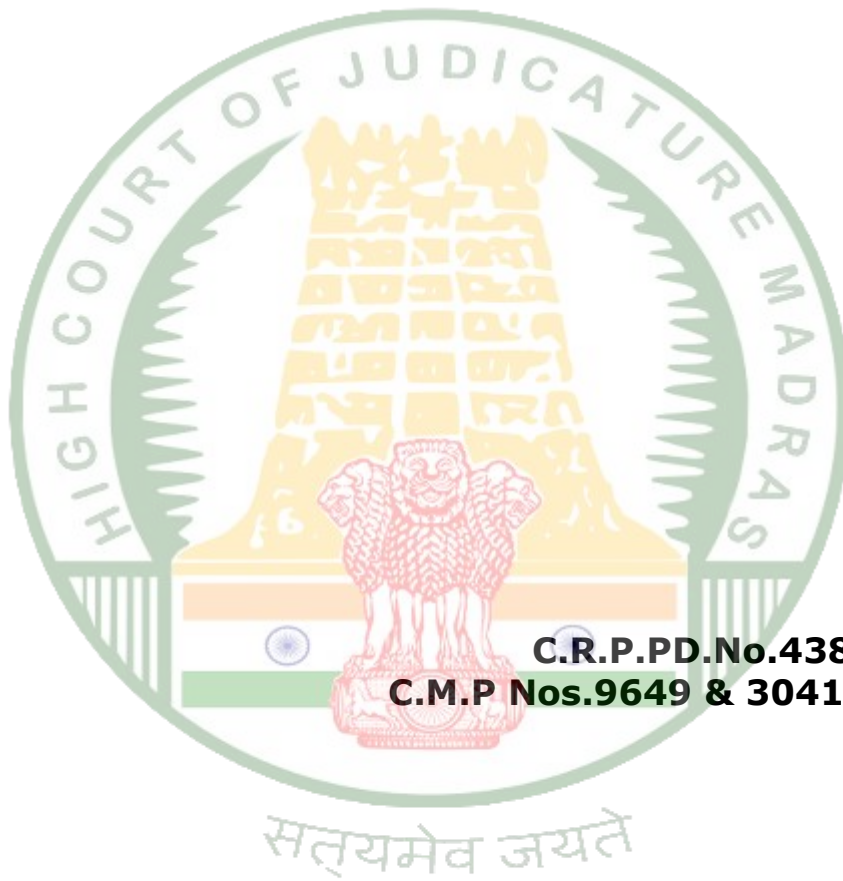
Speaking order/non speaking order

To

The III Additional District and Sessions Judge, Coimbatore.

V.BHARATHIDASAN, J.,

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