

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.2775 of 2011

and

M.P.No.1 of 2011

1.Ramasamy (died)

2.S.Manikavasagam

3.Sakunthala

4.Siva Devi

5.Hamachandran

6.Menaka

.. Petitioners / Defendants
1 and 2

(Appellants 3 to 6 brought on record as LRS of the deceased 1st appellant vide order dated 23.07.2020 made in C.M.P.No.22282, 22288 and 22291/2019 in CRP.(NPD).No.2775 of 2011)

Vs.

1.Minor.Srinithi

2.Minor.Rajeswaran

(Minor respondents 1 and 2 represented by their next friend/mother, S.Kalaivani)

3.Sellappa Gounder @ Palanisamy

4.Selvaraj

5.Gandhimathi

6.Nachammal

7.Selvam

8.Malliga .. Respondents / Plaintiffs

(RR 6 to 8 impleaded vide order of Court dated 23.07.2020 made in C.M.P.No.22286/2019 in C.R.P.(NPD).No.2775 of 2011)

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order passed by the Additional District Munsif Court, Namakkal in I.A.No.845 of 2008 in O.S.No.68 of 2005 dated 17.06.2011.

For Petitioners : Mr.N.C.Ashok Kumar

For Respondents : No appearance

ORDER

The matter is heard through Video Conferencing.

This Civil Civil Revision Petition is filed to set aside the order passed by the Additional District Munsif, Namakkal in I.A.No.845 of 2008 in O.S.No.68 of 2005 dated 17.06.2011.

2. The petitioners are defendants 1 and 2 in O.S.No.68 of 2005 filed by the minor respondents 1 & 2 represented by their mother S.Kalaivani. The respondents 3, 4 and 5 are grand father, father and paternal aunt of minor respondents 1 and 2. The 3rd respondent died and hence the respondents 6 to 8 were impleaded as Legal Heirs of the deceased 3rd respondent. The minor respondents filed the suit for partition against the petitioners and respondents 3 to 5. Pending suit, the mother of the respondents 1 and 2 filed a memo dated 14.12.2006 stating that the suit has been settled out of Court. The said memo was recorded and the suit was dismissed as settled out of Court on 14.12.2006. The respondents 1 and 2, through their mother filed I.A.No.845 of 2008 under Section 151 of C.P.C to set aside the order of dismissal and restore the suit to file.

2(a). According to mother of respondents 1 and 2, the 1st petitioner agreed to partition the property and allot the shares to the minor respondents 1 and 2, if the mother of the respondents 1 and 2 withdraw the suit. Believing the said promise, the mother of the respondents 1 and 2 filed a memo and suit was dismissed as settled out of Court. Subsequent to dismissal of the suit

as settled out of Court, the 1st petitioner refused to partition the property and allot the shares to minor respondents 1 and 2.

2(b). The petitioners 1 and 2 filed counter affidavit and denied that the 1st petitioner agreed to partition of property and allot the shares to the minor respondents 1 & 2. On the other hand, it is the contention of the petitioners 1 and 2 that, only at the instigation of the respondents 3 and 4, the respondents 1 and 2 filed the suit and hence they have questioned the respondents 3 and 4 in the presence of the Panchayatars, names mentioned in the counter. In the Panchayat, the respondents 3 and 4 admitted their fault and the 4th respondent father of the minor admitted that he executed the release deed dated 01.09.2003 relinquishing the rights of the minor respondents 1 and 2 and the mother of the respondents 1 and 2 received amount from the 4th respondent before the Panchayatars.

2(c). Before the Learned Judge, the mother of the respondents 1 and 2 examined herself as P.W.1 and examined one Rajendiran as P.W.2. She did not file any document and no documentary evidence was let in. The petitioners and respondents 3 to 8 did not let in any oral and documentary

evidence. The learned Judge, considering the materials on record and evidence of P.W.1 and P.W.2 and that the petitioners 1 and 2 failed to let in any oral or documentary evidence to prove their contention and in the interest of minor respondents 1 and 2, allowed the I.A.No.845 of 2008 in O.S.No.68 of 2005 recalling the order of dismissal as settled out of Court and restored O.S.No.68 of 2005 to file.

3. Challenging the said order dated 17.06.2011 made in I.A.No.845 of 2008 in O.S.No.68 of 2005, the petitioners have come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioners submitted that the petitioners are bonafide purchasers for valuable consideration without notice. The 4th respondent, father of the respondents 1 and 2 executed a release deed in respect of the suit properties under a registered deed dated 01.09.2003 and the petitioners have mentioned the same in the written statement as early as on 22.03.2005. The mother of the respondents 1 and 2, instead of facing the trial, withdrew the suit as settled out of Court as suit filed for partial partition would fail. The petition filed for restoration of suit is not maintainable. There

was no settlement talk, as alleged by the mother of the respondents 1 and 2 and the learned Judge failed to properly appreciate the evidence of mother of the respondents 1 and 2 as P.W.1. The petitioners who are the bonafide purchasers, developed the suit property into housing sites and sold to various third parties. The learned Judge failed to see that I.A. was not filed under Order XXIII Rule 3 of C.P.C to set aside the compromise and prayed for allowing the Civil Revision Petition.

5. Though notice has been served on the respondents and their names have been printed in the cause list, there is no representation on behalf of them, either in person or through counsel.

6. Heard the learned counsel appearing for the petitioners and perused the entire materials on record.

7. From the materials on record, it is seen that the respondents 1 and 2 who are the minors represented by their mother have filed the suit for partition of the suit property. Pending suit, the mother of the respondents 1 and 2 filed a memo on 14.12.2006 stating that the suit has been settled out of

Court. The suit was dismissed as settled out of Court on 14.12.2006. Subsequent to that, the mother of the minor respondents 1 and 2 filed the present I.A. to set aside the order of dismissal and restore the suit on the ground that petitioners agreed to partition and allot the shares to the minor respondents 1 & 2 and failed to keep up the said promise. On the other hand, it is the case of the petitioners that 1st petitioner did not make any such promise before the Panchayat, but the mother of the respondents 1 and 2 admitted that she has received amount from the 4th respondent for the value of shares of minor respondents 1 and 2 and then only she withdrew the suit as settled out of Court. In the counter affidavit filed in the above petition, the petitioners have mentioned names of the five panchayatars.

8. Before the learned Judge, the mother of the minor respondents 1 & 2 examined herself as P.W.1 and she spoke about the promise made by the 1st petitioner based on which the suit was withdrawn as settled out of Court. The mother of the minor respondents 1 & 2 also examined P.W.2-Rajendiran who deposed that, on the date of Panchayat, the 1st petitioner agreed to partition the suit property and allot the shares to minor respondents 1 and 2, if the suit is withdrawn by their mother. The petitioners have not examined any of the

Panchayatars to rebut the evidence of P.W.2 and to substantiate their contention that before the Panchayat the mother of the respondents 1 and 2 have received amount from for the value of minor shares from the 4th respondent and agreed to withdraw the suit. Further, no memo of compromise was filed by the respondents 1 and 2 duly signed on behalf of the respondents 1 and 2 and no petitions were filed before the Court and no compromise was recorded and suit was not dismissed based on the compromise. In view of the above, the contention of the learned counsel appearing for the petitioners that respondents 1 and 2 ought to have filed petition under Order XXIII Rule 3(a) of C.P.C is without merits.

9. The learned Judge, considering all the materials placed before him, especially the evidence of P.W.1 and P.W.2 and failure on the part of the petitioners to let in any oral or documentary evidence to rebut the evidence let in on behalf of the respondents 1 and 2, allowed the I.A. recalling the order dated 14.12.2006 and restored the suit to file, in the interest of minor respondents 1 & 2. The learned Judge allowed the I.A. by giving cogent and valid reason for recalling the order of dismissal and restoring the suit to the file. There is no illegality or irregularity in the order of the learned Judge

warranting interference by this Court.

10. In the result, the Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

14.09.2020

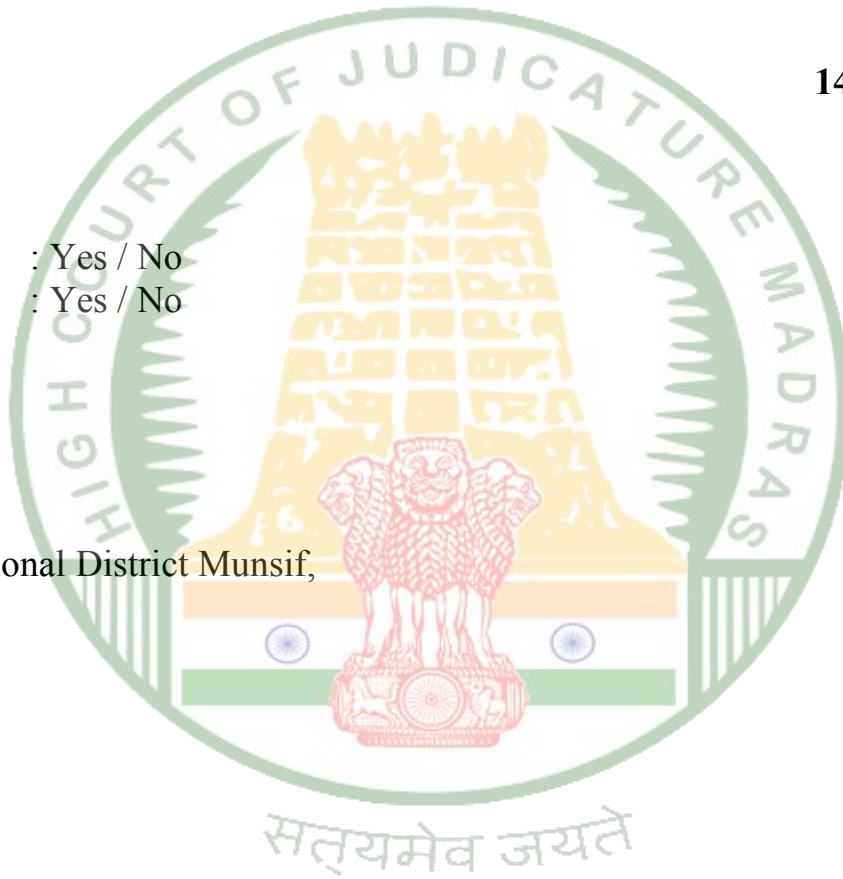
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Index : Yes / No

Internet : Yes / No

To

The Additional District Munsif,
Namakkal.



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V.M.VELUMANI, J.

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