

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRP(PD).2460 of 2015

and

MP.No. 1 of 2015

G.Elumalai Reddy

... Petitioner

Vs.

1. Mannur Properties Pvt Ltd.,
rep by its Authorised Signatory
V.Kanniappan

2. R.Chandrasekaran

3. M/s.Illupur Real Estates Pvt Ltd.,
rep by its Director
V.Kanniappan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of the learned District Munsif, Thiruvallur dated 25.03.2015 in IA.No.492 of 2015 in OS.No.172 of 2009.

For Petitioner : Mr.K.V.Babu

For Respondents : Mr.K.Sridhar for R1
Mr.S.Hemalatha for R2
No Appearance for R3

ORDER

This Civil Revision Petition has been filed by the petitioner /first defendant against the dismissal of his application in IA.No.492 of 2015 in OS.No.172 of 2009 on the file of the District Munsif, Thiruvallur dated 25.03.2015.

2. The petitioner herein had filed an application under Order 8 Rule 9 of CPC seeking permission of the Court for filing additional written statement. The learned District Munsif, Thiruvallur had dismissed the said application by the order dated 25.03.2015. Feeling aggrieved, the petitioner/first defendant has filed the present Civil Revision Petition.

3. Heard Mr.K.V.Babu, the learned counsel for the petitioner and Mr.K.Sridhar, the learned counsel for the first respondent/plaintiff and Ms.S.Hemalatha, the learned counsel for the second respondent.

4. The learned counsel for the petitioner has submitted that the first respondent herein had filed a suit in OS.No.172 of 2009 on the file

of the District Munsif, Thiruvallur to declare the cancellation deed dated 25.04.2006 executed by the petitioner herein as null and void and also for permanent injunction restraining the defendants 1 and 2 therein from interfering with his peaceful possession and enjoyment of the suit property. He further submitted that after receipt of summons, the petitioner herein had entered appearance by engaging a counsel and filed a written statement stating that the alleged power of attorney executed in favour of second defendant is a fake and forgery one and hence, the sale deed executed by the second defendant in favour of the plaintiff based on the said power of attorney is not valid. Therefore, the petitioner herein had executed a cancellation deed dated 25.04.2006. He further submitted that the petitioner herein had sold a portion of the property in favour of third party, even before filing of the suit, but inadvertently and also due to old age, the petitioner could not mention the said fact in the main written statement and only during trial, the petitioner came to know that the said fact was not mentioned in the main written statement and hence, he filed an application in IA.No.492 of 2014 under Order 8 Rule 9 of CPC seeking permission of the court to file additional written statement. He further submitted that since already a portion of the property was sold

to third party, the plaintiff should have impleaded the said third party as a defendant and only to bring to the notice of the court and also to the plaintiff, the petitioner herein had filed an application in IA.No.492 of 2014 seeking permission of the Court to file additional written statement, but, without considering the said fact, the trial court had erroneously dismissed the said application and hence, he prayed to allow the Civil Revision Petition and set aside the order passed by the learned trial court in IA.No.492 of 2014.

5. Per Contra, the learned counsel for the first respondent/plaintiff has submitted that if really, the petitioner had sold a portion of the property to the third party even before filing of the suit, the said fact should have been mentioned in the main written statement itself. He further submitted that the suit was filed in the year 2009 and the same was taken up for trial in the year 2014 and evidence was also adduced on both sides and at that stage, the petitioner had filed an application seeking permission of the Court to file additional written statement, only with a view to drag on the proceedings. He further submitted that even in the said additional written statement or in the affidavit filed in support of

the said application, the petitioner has not stated on which date, he had sold the property and to whom he sold and taking into consideration the aforesaid facts, the trial court had rightly dismissed the application and in the said order, this Court need not interfere and hence, he prayed to dismiss this Civil Revision petition.

6. The learned counsel for the second respondent has submitted that after execution of the cancellation deed by the petitioner herein, the second respondent gave alternatively some other land to the first respondent/plaintiff and as such, the plaintiff's suit itself is not maintainable and therefore he prayed to pass appropriate order.

7. A perusal of the typed set of papers filed by the petitioner shows that the first respondent herein had filed a suit in OS.No.172 of 2009 on the file of the District Munsif to declare the cancellation deed executed by the petitioner herein dated 25.04.2006 as null and void and for consequential relief of permanent injunction restraining the defendants 1 and 2 from interfering with his peaceful possession and enjoyment of the suit property.

8. The first respondent had stated in his plaint that the petitioner herein had executed a power deed in favour of the second respondent herein and based on the said power deed, the second respondent had sold the property to him vide sale deed dated 18.04.2006. The petitioner herein has been arrayed as first defendant. In the suit after receipt of summons the petitioner herein entered appearance and filed a written statement stating that the said power of attorney has not been executed by him and the same was falsely created by the plaintiff and the second defendant and hence, the said deed which was executed by the second defendant in favour of the plaintiff will not bind upon him and hence he executed a cancellation deed dated 25.04.2006. During trial, it appears that both the parties adduced evidence and at that stage, the petitioner herein had filed an application in IA.No.492 of 2014 under Order 8 Rule 9 of CPC seeking permission of the court to file additional written statement. In the said additional written statement, the petitioner herein had stated that even before filing of the suit, he had sold some of the items to the third parties viz., Balaraman, Suguna, Sridhar and brother of Sridhar and hence, the said third parties are necessary parties. He also mentioned the date and document number. Under the said circumstances

even if any decree is passed in favour of the first respondent herein, he may have difficulty to enjoy the fruits of the decree. Therefore, this Court is of the view that the application filed by the petitioner seeking permission to receive additional written statement has to be allowed. If the said application is allowed, that will help the first respondent/plaintiff to take appropriate action against the proper persons. Hence, this Court is inclined to allow this Civil Revision Petition.

9. In the result, this Civil Revision Petition is allowed. No costs. The order passed by the learned District Munsif, Thiruvallur in IA.No.492 of 2015 in OS.No.172 of 2009 dated 25.03.2015 is set aside. Accordingly, IA.No.492 of 2015 is allowed. Consequently, connected miscellaneous petition is also closed.

सत्यमेव जयते

22.12.2020

Vv

Index :Yes/No
Internet : Yes/No

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P.RAJAMANICKAM.J.,

Vv

To
The District Munsif,
Thiruvallur



**C.R.P(PD).2460 of 2015
and
MP.No.1 of 2015**

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