

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(PD).No.2263 of 2019
and
C.M.P.N.14719 of 2019

1.Ravichandran
2.Suseela

...Petitioners

Vs

1.P.Mahlakshmi,
2.Minor Karthik

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the Fair and decretal order dated 29.01.2019 in I.A.No.170 of 2016 in O.S.No.284 of 2013 on the file of the Additional District Munsif Court, Alandur and to allow the Civil Revision Petition.

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For Petitioners : Mr.K.Subbu Ranga Bharathi

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order dated 29.01.2019 made in I.A.No.170 of 2016 in O.S.No. 284 of 2013, on the file of the Additional District Munsif Court, Alandur and to allow the Civil Revision Petition.

2.The Revision petitioners are the defendants 1 & 2 in O.S.No.284 of 2013. The respondent filed a suit, seeking for declaration that the settlement deed executed by the 1st defendant in favour of the 2nd defendant with regard to schedule property, is null and void coupled with the prayer for permanent injunction.

3.Pending suit, the petitioners herein has preferred the application in I.A.No.170 of 2016 to declare that the settlement deed executed by the 1st defendant in favour of the 2nd defendant dated 02.06.2011 with regard to Schedule property is null and void coupled with the prayer for permanent injunction against the defendant. The Revision petitioner filed a written

statement before the trial Court and disputed the claim of the plaintiff. Thereafter, the 2nd defendant viz. Suseela filed a petition to reject the suit in O.S.No.284 of 2013 on the ground that there is no cause of action and the suit is barred by Section 4 of Binami Transaction (Prohibition Act)

4.After hearing both sides, the trial judge dismissed the petition on the ground that whether the respondents/plaintiffs are in legal possession or not it will be decided only after a full fledged trial. Further, the plaint did not suffer from any lack of cause of action. No ground is available to attract the provision of Order 7 Rule 11 of CPC.

5.Against the order of the trial Court in I.A.No.170 of 2016 in O.S.No.284 of 2013 dated 29.01.2019, the petitioner is before this Court with the present prayer.

6.The learned counsel for the revision petitioners submitted that petitioners are the defendants 1 & 2 in the suit in O.S.No.284 of 2013. The

suit was filed for declaration that the settlement deed executed by the 1st defendant in favour of the 2nd defendant dated 02.06.2011 with regard to Schedule property, as null and void coupled with the prayer for permanent injunction against the defendant. The Revision petitioner filed a written statement before the trial Court and disputed the claim of the plaintiff. Thereafter, the 2nd defendant viz. Suseela filed a petition to reject the suit in O.S.No.284 of 2013 on the ground that there is no cause of action and the suit is barred by Section 4 of Binami transaction (Prohibition Act). The trial Court without deciding the merits of the case of the petitioner dismissed the petition on the ground whether the plaintiffs are in legal possession or not, it will be decided only after a full fledged trial. After considering the evidence adduced by the parties, no ground is made out for rejecting the plaint. The learned counsel reiterated other grounds raised in the grounds of revision and thus pleaded to set aside the order of the trial Court and allow the petition.

7.No representation for the learned counsel for the respondent.

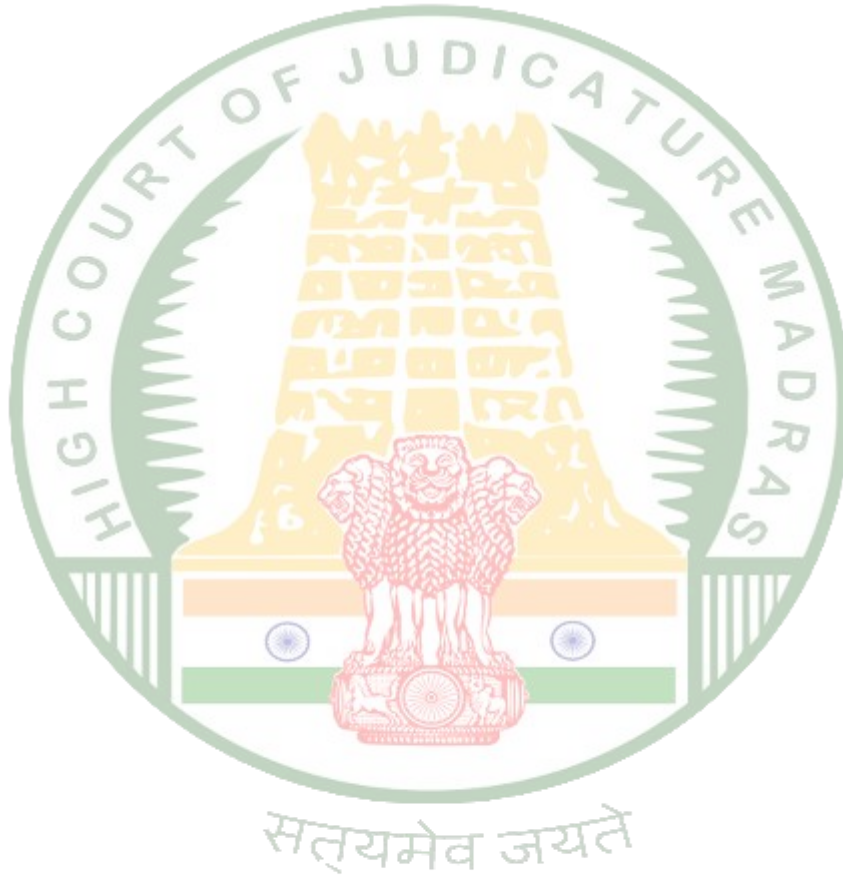
8.Heard learned counsel for the petitioners and perused the materials available on record.

9.Considering the above submissions made by the learned counsel for the petitioner, the plaintiff viz., Mahalakshmi/1st respondent married the 1st defendant viz., Ravichandran on 09.06.1995. The father of the plaintiff paid a sum of Rs.95,000/- on 06.07.1995 to the 1st defendant/ husband for the purpose of purchasing the suit property. The suit property was purchased by defendant/ Husband on 10.07.1995 in his name. From the date of purchase, the plaintiffs and the defendants are jointly in possession. After subsequent period and after the birth of minor Karthik/2nd plaintiff, there was a strained relationship so that the 1st defendant deserted his wife/plaintiff and filed H.M.O.P.No.43 of 2004 on the file of the Subordinate Judge, Seyyar. The same was dismissed for default for not taking steps for prosecution. The 1st defendant made an attempt to alienate the schedule mentioned property with the help of 2nd defendant and also he

had executed the settlement deed in favour of 2nd defendant which is disputed in the suit. It has to be decided considering the legal evidence let in by the parties. While considering the application in Order 7 Rule 11 the Court has to look into only the plaintiffs allegation and the documents submitted by the plaintiff cannot look into by defendants. Actual or probable defence cannot be looked into at the stage, statements made in the plaint are germine. The pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. Therefore, the trial Court considering the plaintiffs allegation rightly dismissed the petition. I find no error in the order of the trial Court so I confirm the order of the trial Court and dismiss the petition.

10. Accordingly, this Civil Revision Petition stands dismissed. consequently connected miscellaneous petition is also closed. No costs.

Index: Yes/No
Speaking Order: Yes/No
vsn

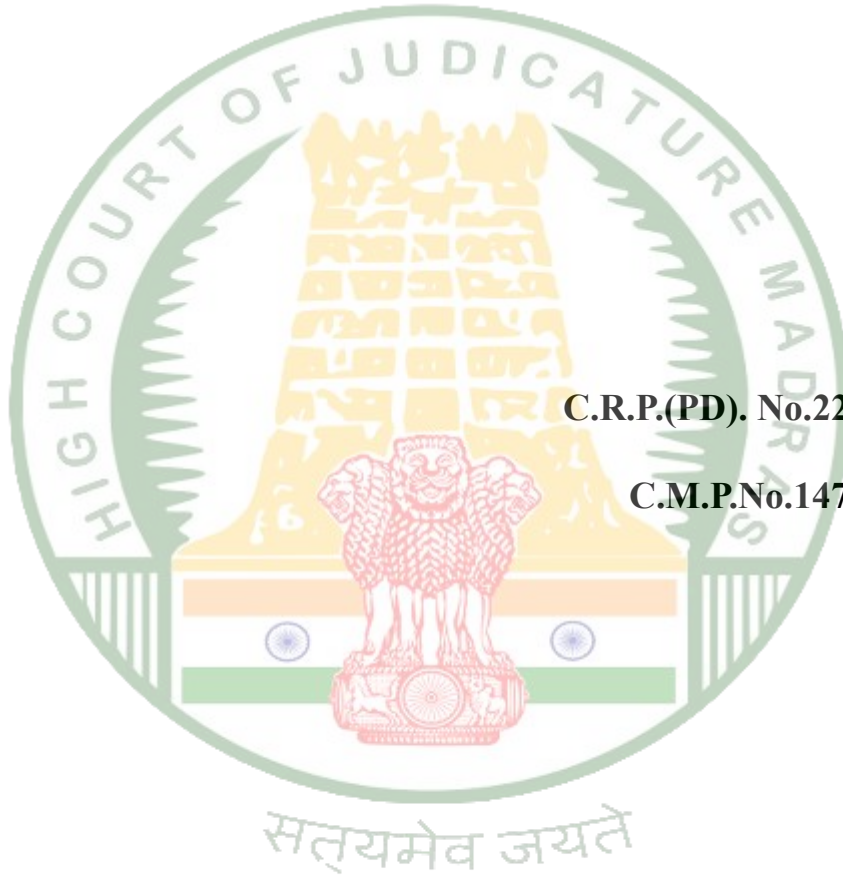


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