

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.555 of 2018
and
C.M.P.No.2973 of 2018

C.H.Venkateswara Rao

...Petitioner

Vs.

1.V.Laxman
2.V.Bharadwaj
3.Balasubramaniam Iyer

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of Indian, to set aside the fair order and decreetal order made in I.A.No.5804 of 2017 in O.S.No.9541 of 2009 dated 07.12.2017 on the file of the III Assistant Judge, City Civil Court, Chennai and allow the above Civil Revision Petition.

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For Petitioner : Mr.R.Rajaramani

For Respondents : Mr.J.R.K.Bhavanantham

ORDER

The first defendant in O.S.No.9541 of 2009 has come with this audacious revision, questioning the dismissal of an ill-advised application filed by him in I.A.No.5804 of 2017 seeking to dismiss the entire suit as having abated. The suit was filed by the respondents 1 to 3 herein along with one Mrs.V.Lakshmi, seeking a declaration that the deed of cancellation dated 25.06.1999, cancelling the sale deed executed by him in favour of one V.V.Iyer on 31.08.1981 as null and void. The suit was filed by the fourth plaintiff viz., Balasubramaniam.V.Iyer, for himself and as the power agent of plaintiffs 1 to 3. Though the plaint was signed on 15.01. 2009, the suit was actually filed in to Court on 13.04.2009. It appears that in the interregnum, the first plaintiff Lakshmi died. Thereafter, the plaintiffs filed an application in I.A.No.4493 of 2012 seeking to strike out the name of the first plaintiff from the array of parties. This application was allowed, after contest on 02.03.2012.

2. In the affidavit filed in support of the said application in

I.A.No.4493 of 2012 the plaintiffs have categorically stated that the sole heir of the first plaintiff Lakshmi namely, Mrs.Sundari is not inclined to prosecute the legal proceedings. After the said application was ordered, the suit was posted for trial. During the course of the trial, the first defendant came up with this application seeking to dismissal of the suit as having abated in its entirety.

3. The learned trial Judge by the order impugned in the Revision has rightly rejected the claim of the first defendant. As already stated that suit is one for a declaration that the cancellation deed is invalid. It is open to some of the heirs to question the cancellation deed and get a decree which would enure to the benefit of the other heirs. The plaintiffs have not sought for a declaration of their title to the property. They have only sought for a declaration that the deed of cancellation is invalid. Once the deed of cancellation of the year 1999 is declared to be invalid, then as per the 1981 sale deed, the property would belong to Late. V.V.Iyer and all his Legal heirs would be entitled to the property.

4. It is also seen from the records that V.V.Iyer died as a bachelor and the plaintiffs are his brothers and sisters. Therefore, I do not see any merit in the objection made by the 1st defendant. The trial Court was justified in dismissing the application. I do not see any error or material irregularity in the order of the trial Court in order to enable me to interfere with the same.

5. Hence, this Civil Revision Petition fails, and it is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

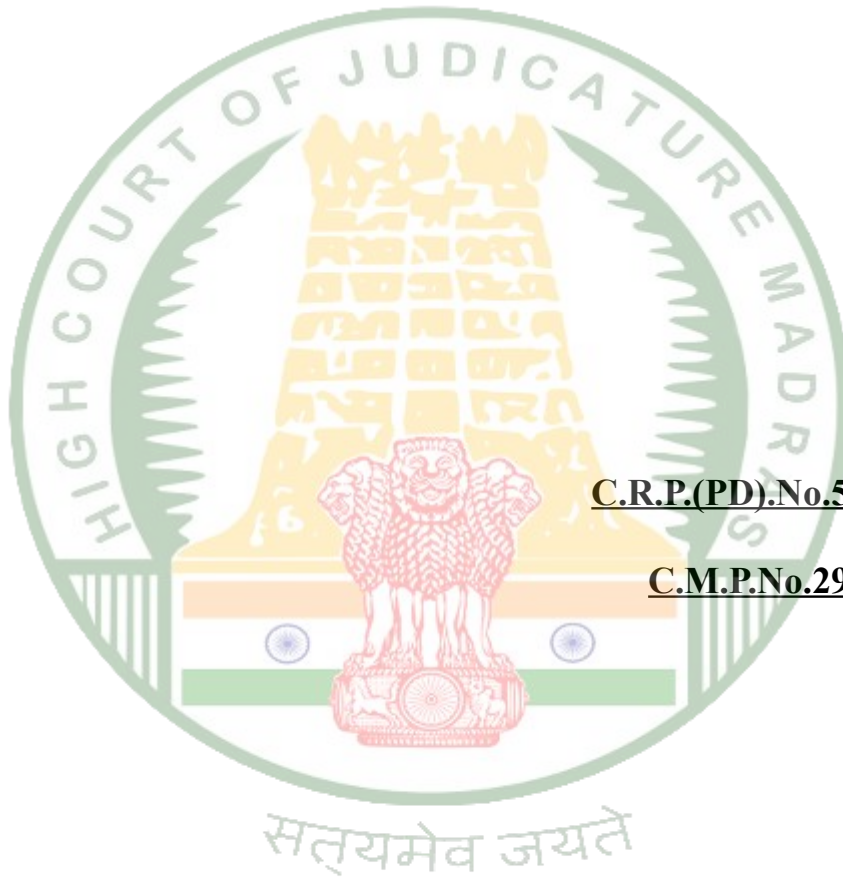
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Internet: Yes
Index : No
Speaking order
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To
The III Assistant Judge, City Civil Court, Chennai.

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R.SUBRAMANIAN, J.
dna



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