



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 01.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD)No.366 of 2021

A.B.Iniya Niranjan

...Petitioner

Vs

1.Mrs.G.Prema

2.V.Rathina Kumari

3.Mrs.V.Shobana

4.Mr.Mohammed Yasin

5.Mrs.Zeenath Ara Begum

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to dispose of the suit in O.S.No.1242 of 2018 on the file of the learned II Assistant City Civil Court, Chennai within the stipulated time.

For Petitioner : Mr.A.B.Iniya Niranjan
Party-in-person

ORDER

The limited prayer sought for in the present revision is for a direction to the trial Court to dispose of the suit expeditiously.

2. The petitioner herein had filed the suit in O.S.No.1242 of 2018 seeking for the following relief:

(i) declaration declaring that the settlement deed dated 11.09.2013 and sale deed dated 22.11.2017 as null and void and unenforceable;

(ii) Permanent injunction, restraining defendants 1-3, their men, agents, servants and representatives or any one from alienating and encumbering the plaint scheduled property;

(iii) Order for costs of the suit;

3. The petitioner would submit that the Court below failed to see that the reasons stated in the sale deed dated 22.11.2017, under challenge, is completely different from the stand taken in the written statement of the respondents 1 to 3 and consequent petition for probate in O.P.No.50 of 2019, which for transferred as T.O.S.No.23 of 2019. Further, he would submit that while it is admitted in the alleged will dated 19.05.2010 that the petitioner's father got married and having the petitioner as his only son, the sale deed dated 22.11.2017, in question, states that the first respondent acquired the absolute right over the property, since the



WEB COPY

petitioner's deceased father remained unmarried. This itself is self-contradictory and sufficient to hold the sale deed dated 22.11.2017 as null and void. The Court below failed to apply its mind to the stand of the respondents 1 to 3 who pleaded on afterthought to come out with the plea of the existence of the alleged will dated 19.05.2010 and ought not to have adjourned the suit from time to time for years together without adjudicating the suit. The respondents are taking different stands for delaying the proceedings and continued to be in possession and enjoyment of the property by respondents 1 to 3 and 4th and 5th respectively consequent to the illegal execution of sale deed dated 22.11.2017. The first respondent ought to have gone into the antecedent of the respondents 1 to 3 who continued to create illegal execution of sale deeds and continued to indulge in alienating the properties of the petitioner's father to which the petitioner is legally entitled to as a first class legal heir. In any event, the Court below should have concluded not to wait by repeated adjournments numbering 18 times from October 2018, citing the pendency of O.P., i.e., for the past 3 years. He would submit that the Court below ought to have concluded that even if the O.P., is allowed, sale deed dated 22.11.2017, executed by the first respondent will no longer be treated as legal, since the reason assigned for having absolute right over the property is unfounded in law, on facts and against law. The learned Judge ought to have seen that O.P.No.50 of 2019 filed by the respondents 1 to 3 to probate the will dated 19.05.2010, is transferred as T.O.S.No.23 of 2019, on filing Caveat No.2744 of 2019 by the petitioner. The petitioner stated that the Court below ought to have adjudicated the case in hand independently, uninfluenced by the pendency of O.P.No.50 of 2019 transferred as T.O.S.No.23 of 2019 on the file of this Court. Hence, the petitioner seeks this Court to intervene in this matter by directing the Court below to dispose of the suit in O.S.No.1242 of 2018 within a short period of time and if not, the petitioner will be put to heavy monetary loss and grave injustice by depriving of his legitimate right to share in the property.

4. Heard the learned counsel for the petitioner and perused the materials placed before this court.

5. On a perusal of the adjudication orders, it is seen that the suit was initiated in the year 2018 and the same was pending as the probate proceedings is pending as T.O.S.No.23 of 2019, before the Court below. Initially this matter was posted for filing written statement on 17.04.2018, the matter is pending for written statement till 11.09.2018. On 04.10.2018, the matter was adjourned for framing of issues and on the same day, issues were framed. Thereafter, the matter was pending for mediation report till 17.12.2018. From 17.01.2019 till date, the matter is pending.



6. This Court is of the view that a time frame cannot be fixed to dispose of the same, since the probate proceedings are yet to be completed. Hence, there shall be a direction to the learned Judge, II Assistant City Civil Court, Chennai to dispose of O.S.No.1242 of 2018 as expeditiously as possible, after completion of the said proceedings without unnecessary adjournments.

7. Accordingly, the present petition stands disposed of.
No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sbn

To
The II Assistant Judge City Civil Court,
Chennai.

C.R.P.(PD)No.366 of 2021

RK(CO)
B.VC(15.07.2021)