

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P.(PD).No.2492 of 2018 and
C.M.P.No.15247 of 2018

Sumathi

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Petitioner

..Vs..

R.Bharathi

..

Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order of the Principal Subordinate Judge's Court at Tiruppur, dated 04.11.2017 in I.A.No.260 of 2017 in O.S.No.582 of 2010.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.Ma.Pa.Thangavel
(No appearance)

ORDER

This Civil Revision Petition has been filed challenging the order passed by the learned Principal Subordinate Judge, Tiruppur dated 04.11.2017 in I.A.No.260 of 2017 in O.S.No.582 of 2010.

2. The respondent herein filed a suit in O.S.No.582 of 2010, against the petitioner and two others seeking to declare that the decree and judgment passed by this Court in O.S.No.145 of 2010 on 29.04.2010 is null and void and for costs. Pending disposal of the same, the petitioner herein filed an interlocutory application in I.A.No. 260 of 2017, on the file of Principal District Judge, Tirupur to reject the plaint, which was dismissed by the learned Judge vide order dated 04.11.2017. Challenging the said order, the present Civil Revision Petition is filed.

3. The main contention of the revision petitioner is that the respondent does not have any case as the property was settled by virtue of the Will dated 27.07.1964 in favour of the petitioner as well as her brother. He further contended that the petitioner herein filed a suit in O.S.No.145 of 2010 against her brother, wherein a compromise was arrived at between herself and her brother and accordingly the decree was passed and hence they are entitled for property in terms of Will dated 27.07.1964. He further submitted that though the respondent claimed that the property was settled by her father by virtue of the Will dated 07.10.1947 and the suit schedule property was bequeathed to and in favour of the third defendant viz., Karaivinayakar temple

and the decree in O.S.No.145 of 2010, was also obtained by way of collusion between the petitioner and her brother, who is the second defendant in the present suit, the learned counsel for the petitioner submitted that the will dated 07.10.1947 was cancelled by virtue of the will dated 27.07.1964, which was executed by the grandfather of the petitioner herein and therefore, the decree in O.S.No.145/2010 was passed taking all these aspects into consideration. He further submitted there is no fraud played on the part of the revision petitioner and the decree was not obtained by way of collusion between the petitioner and her brother and hence there is no case for the respondent, who is daughter of the petitioner, in the suit for filing the present suit in O.S.No.582 of 2010. He would further submit that the petitioner filed an application to reject the plaint and without considering all these aspects, the Court below dismissed the application, on the ground that it requires detailed trial and all these issues can be decided at the time of trial.

4. Despite the respondent being served and appeared through counsel, there is no representation on behalf of her today.

5. Heard the learned counsel for the petitioner. Perused the materials available on record.

6. Upon perusal of the materials on record and after hearing the learned counsel for the petitioner, it appears that originally the father of the respondent settled the property bequeathing the suit schedule property by way of registered Will dated 07.10.1947 in favour of the third defendant viz. Karai Vinayakar Temple. Thereafter, there was a partition by virtue of partition deed 31.12.1961 and in the partition deed, the revision petitioner's father was appointed as a trustee to maintain the properties of the Karai Vinayakar temple. In such circumstances, the revision petitioner filed a suit in O.S.No.145 of 2010 for partition against his brother who is none other than the second defendant in the suit. In the said suit, there was a compromise arrived at between the parties. Therefore, the suit was decreed as prayed for. In the main suit, they have referred to the partition deed dated 27.07.1964.

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7. According to the revision petitioner, as per the said partition deed, the suit property has been settled to and in favour of the revision petitioner as

well as her brother, who is the second defendant in the suit. Therefore, they are entitled for property. However, the plaintiff in the present suit, who is the respondent herein contended that the said will was a forged one and no will was registered in her favour and the suit filed by the petitioner was also a collusive suit. Further, they have filed the compromise Memo as if the dispute was settled, with the intention to get the property and to justify their illegal acts through the Court. When it came to the knowledge of the plaintiff/respondent through the letter issued by the HR & CE dated 17.06.2010, she obtained the certified copy of the decree in O.S.No.145 of 2010 and found that the defendants 1 and 2 colluded with each other, by cancelling the will executed by the father of plaintiff/respondent.

8. According to the plaintiff, fraud was committed by virtue of the collusion between the defendants 1 and 2 in filing the earlier suit in O.S.No.145 of 2010 and obtained the decree behind her back is not legally sustainable and the same is liable to be set aside. Further, the Suit property was settled by her father in the year 1947 itself. Thereafter, her brother was appointed by virtue of partition deed dated 31.12.1961.

9. The Plaintiff being a daughter of executor of the will in the year 1947, is entitled to file present suit as her father's property was settled in favour of the temple. That apart, this Court is of the considered view that in the event if there is any fraud or misappropriation made in obtaining decree in O.S.No.145 of 2010, if the same comes to the knowledge of the Court, the Court can *suo motu* set aside the same, in which case there is no necessity for the plaintiff/respondent herein to claim relief for herself but it would be suffice to bring into the knowledge of this Court by her about the fraud played in obtaining Judgment and decree in O.S.No.145 of 2010 through the present suit in O.S.No.582 of 2010, for declaration to declare that the decree and judgment passed by this Court in O.S.No.145 of 2010 on 29.04.2010 is null and void. It is in the hands of the Court to set right the same, if the fraud is said to have been committed and obtained the decree. Therefore, this Court is of the view that all these aspects has to be decided only after trial, which the court below has rightly observed while dismissing the application. Hence, I do not find any infirmity or illegality in the order passed by the Court below.

In view of the same, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.03.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

To

The Principal Subordinate Judge's Court,
Tiruppur.

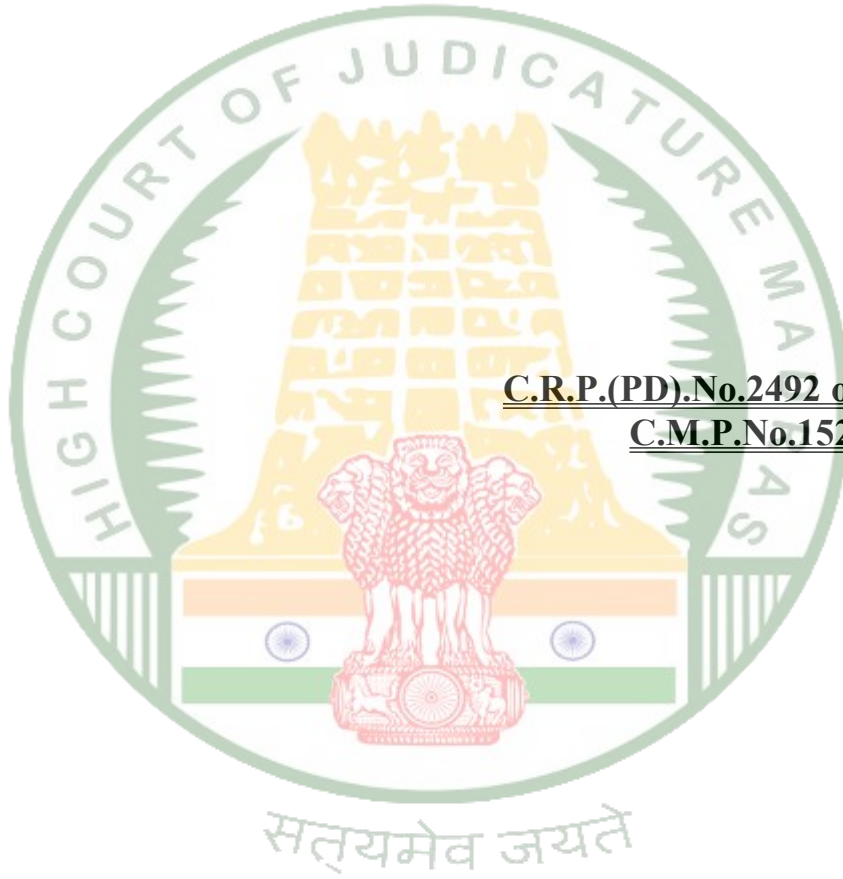


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KRISHNAN RAMASAMY,J.

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