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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.09.2021

PRONOUNCED ON : 28.10.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

CMP.No.11899 of 2021

in

As.Sr.No.44900 of 2021

M/s Vox Realities Private Limited,
Rep by its Managing Director Mr.G.Ravanan,
No 10/52, III Street,
Abirampuram, Chennai-600018

...Petitioner

Vs.

1.Kavita

2.Priyadarshini

3.D.Murugesan

4.M/s Sri Kandasamy Permanent Fund Ltd
Rep by its Chairman.
Carrying business at,
No.60, Swami Pandaram Street,
Chintadripet, Chennai-600 002,
Now carrying business at,
No 28, Agraharam Street,
Chintadripet, Chennai-600 002.

5.Mrs. Lavanya

6.Mrs. Deepika

...Respondents/Plaintiffs

PRAYER: Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure to grant leave to appeal against and pass such further order or orders as this Hon'ble Court may deem fit.

Prayer in A.S.No.44900 of 2021: First appeal filed under section 96 of the code of civil procedure read with order XLI Rule 1 of CPC 1908 against the Judgment of the II Additional City Civil Court, Chennai in O.S.NO.2485 of 2015, dated 29.06.2017.



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For Petitioners : Mr.V.K.Vijayaraghavan
for M/s Ojas Law Firm

For Respondents : Mr.M.Raja Raman for R1, R2, R5 & R6
R.3 - served but no appearance
R.4 - Not ready in notice

JUDGEMENT

The above application is filed by a 3rd party seeking leave to appeal against the Judgment and Decree in O.S.No.2485 of 2015 on the file of the II Additional City Civil Court, Chennai. The petitioner is the purchaser of the suit property pending the suit. In order to appreciate the grievance of the petitioner herein, it is necessary to briefly allude to the facts which has culminated in the filing of the suit and the proceedings pending the suit and thereafter. The petitioner herein is referred to as the petitioner and the respondents are referred to in their ranking before the Trial Court.

2. The plaintiffs had originally filed the suit C.S.No.738 of 2003, on the file of this Court for the following reliefs:

i) For declaration declaring that the mortgage deeds executed by the first defendant in favour of the second defendant on 22.08.1994 for a sum of Rs.5 Lakhs, Rs.2 1/2 lakhs and Rs.2 1/2 lakhs respectively and registered as Document Nos.1844, 1845 and 1846/94 in respect of house, ground and premises at No.203, 204, St. Marys Road, Mandaveli, Chennai-28, more fully described in the schedule hereunder are illegal and void and be cancelled.

ii) For permanent injunction, restraining the second defendant, their agents, servants or any person acting on their behalf from in any way bringing the property, house, ground and premises at No.203, 204, St. Marys Road, Mandaveli, Chennai-600028 morefully described in the schedule hereunder by sale by public auction on 18.10.2003 at 3.00 P.M. or any other subsequent date.

3. It is their case that the suit property belonged to one Sakuni Bai Ammal who had purchased the same under a registered sale deed dated 25.09.1939. The suit property was thereafter purchased by Pachai Ammal who was the parental grandmother of the plaintiffs and defendants 3 and 4 under a registered sale deed dated 11.10.1941. Pachai Ammal who owned extensive property had settled the suit property on her son the 1st defendant, the father of the plaintiffs and defendants 3 and 4 herein and



another property on her other son. Under the said deed she had made it clear that the 1st defendant and his brother would only enjoy the usufructs of the income from the suit property and they were expressly prohibited from alienating or otherwise encumbering the suit property. On their death the property was to devolve on their respective children. Pachai Ammal died on 21.05.1985 and thereafter in keeping with the terms of the settlement deed, the 1st defendant came into the possession of the same.

4. The plaintiffs would submit that they came to know that there was some dispute in respect of the suit property, and on 06.10.2003 they came to know that the 2nd defendant was proposing to bring the property to sale by public auction since certain amounts that the 1st defendant had borrowed from them had not been repaid. The plaintiffs came to learn that their father, the 1st defendant had borrowed a sum of Rs.10,00,000/- from the 2nd defendant and had created an Equitable mortgage. It appears that the 1st defendant had projected himself as the absolute owner of the suit property. The 2nd defendant who extended the loan has also not exercised due diligence before parting with the money in as much as they have not perused the Encumbrance Certificate and taken note of the settlement deed, which clearly shows that the 1st defendant did not have the right to sell or encumber the property and the ultimate beneficiaries were the plaintiffs and defendants 2 and 3 herein. Since the property was being brought to sale, the plaintiffs were constrained to institute the above suit.

5. The 1st and the 2nd defendants remained ex parte. The 2nd defendant who had entered appearance did not file a written statement. The 3rd and the 4th defendants had filed a written statement which only complemented the case of the plaintiff and they had also contended that the property belonged to them. Pending the suit, since the pecuniary jurisdiction of the City Civil Court, Chennai had been enhanced, the suit was transferred to the City Civil Court, Chennai and was taken on file as O.S.No.2485 of 2015, on the file of the II Additional City Civil Court, Chennai.

6. The learned Trial Judge had framed issues as to whether the plaintiff was entitled to the declaration sought for by them as well as the injunction.

7. The 1st plaintiff examined herself as P.W.1 and Ex.A.1 to A.8 were marked. On the side of the defendants, the 2nd defendant who was the contesting defendant had neither filed a written statement nor participated in the trial, though initially they had participated in the proceedings. Ultimately, on considering the evidence on record and particularly taking into account the



terms of the settlement deed the Learned II Additional Judge proceeded to decree the suit as prayed for. The Judgment and Decree in O.S.No.2485 of 2015 was pronounced on 29.06.2017, thereafter it appears that the plaintiffs and respondents 3 and 4 as a consequence of the decree obtained by them, had filed the suit O.S.No.384 of 2019 for the following reliefs:

a. for mandatory injunction, directing the fourth defendant to cancel the deeds of mortgage dated 22.08.1994, executed by the first defendant in favour of the second defendant and registered as Document Nos.1844, 1845 & 1846 of 1994 in respect of House, Ground and premises at Nos.203, 204, St. Mary's Road, Mandaveli, Chennai - 600028, more fully described in the Schedule hereunder, make an entry in their books and order the same to be delivered to the plaintiffs;

b. for mandatory injunction, directing the fourth defendant to cancel the deed of sale executed on 12.01.2007 and registered as Document No.114 of 2007, in favour of the third defendant by the second defendant in respect of House, Ground and premises at Nos.203, 204, St. Mary's Road, Mandaveli, Chennai - 600028 more fully described in the Schedule hereunder;

c. consequently, direct the third defendant to deliver vacant possession of the property viz., House, Ground and premises at Nos.203, 204, St. Mary's Road, Mandaveli, Chennai - 600028 to the plaintiffs, pursuant to the declaration that the sale deed executed on 12.01.2007 and registered on 22.01.2007 in Document No.114 of 2007, in favour of the third defendant by the second defendant as not valid and not binding upon the plaintiffs;

d. directing the third defendant to pay the plaintiffs a sum of Rs.1,95,000/- as damages from 29.06.2017 (ie) date of judgment in O.S.No.2845 of 2015 till date of plaint and further sum of Rs.15,000/- per month as damages from the date of plaint till realization, on account of their use and occupation, of the property (ie) House, Ground and premise at Nos.203, 204, St. Mary's Road, Mandaveli, Chennai - 600028, more fully described in the Schedule hereunder;

e. for permanent injunction, restraining the fourth defendant, their men, agents, servants or



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persons claiming through them from in any encumbering, alienating or altering the structure impairing the value of the property (ie) House, Ground and premises at Nos.203, 204, St. Mary's Road, Mandaveli, Chennai - 600028, more fully described in the Schedule hereunder;

8. This suit O.S.No.384 of 2019 has been filed in the month of August 2018 but numbered in the year 2019. The petitioner herein though served with the notice had not entered appearance in the suit, therefore, on 27.03.2019 they were set ex parte. The petitioner filed an application to set aside the ex-parte order and the plaintiffs herein and defendants 3 and 4 had given their no objection and the application was allowed and the petitioner was permitted to file his written statement in the said suit. In the said suit the trial is under way, P.W.1 is in the midst of adducing evidence, at this juncture the present application seeking leave to file an appeal against the Judgment and Decree in O.S.No.2485 of 2015 has been filed.

9. In the affidavit filed in support of the said application, the petitioner would contend that the 1st defendant is the absolute owner of the suit schedule property and he had mortgaged the property with the 2nd defendant for meeting his urgent necessity and as he had not discharged the debt, the 2nd defendant was constrained to bring the property to public auction exercising their right of private sale. The petitioner would submit that they had purchased the property for a valuable consideration of Rs.30,00,000/- under a sale deed dated 12.01.2007 and from the date of purchase they have been in possession and enjoyment of the same through their tenants. The petitioner would also contend that the revenue records have been mutated in their name. The affidavit would also capture the filing of the suit C.S.No.738 of 2003 and its transfer to the City Civil Court. The petitioner would contend that the suit filed by the plaintiffs was liable to be dismissed since they had not sought for a declaration of their title over the suit property. They would also contend that they had not been impleaded as a party to the suit O.S.No.2485 of 2015 which they would contend is the result of a conspiracy and collusion between the plaintiffs and defendants 1, 3 and 4.

10. The petitioner would plead that the plaintiffs and the defendants 1, 3 and 4 had committed a fraud upon the court as well as upon the petitioner in obtaining the Decree in the suit O.S.No.2485 of 2015. They would contend that they are bonafide purchasers for the value and without seeking the relief of title the plaintiff was not entitled to the said Decree. It is also their case that in the Judgment the Trial Court had confirmed the title over the suit property upon the 1st defendant and also



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held that the plaintiffs were not the owner of the suit property. The petitioner would contend that the filing of the suit O.S.No.384 of 2019 would harm their right and title to the suit property and therefore they have been advised to file the appeal. The petitioner would further submit that when he had received the summons they had contacted their counsel who advised that they need not file any appeal against the Judgment and Decree in O.S.No.2845 of 2015 since they were not a party to the said suit, it was only now they have been advised to file the appeal and therefore the present application seeking leave to file the said appeal. The plaintiff and defendants 3 and 4 have filed a counter inter alia contending that the appeal by the petitioner was not maintainable in as much as the High Court in its order in O.A.No.826 of 2003 in C.S.No.738 of 2003 had passed the following orders on 30.10.2003:

" I applied my mind to the various submissions made by the Learned Counsel on either side and went through the materials available on record. Having regard to the same, I am of the opinion that no case is made out for granting an order of interim injunction as prayed for pending the suit. But, at the same time, I am also inclined to protect the interests of the Plaintiffs, if they ultimately succeeded in the suit. Therefore, while dismissing the application, I am inclined to direct the second defendant (fourth respondent herein) to incorporate in the auction notice itself that the sale will be subject to the result in the suit and also incorporate in the sale deed to be executed by them in favour of the successful buyer that the sale in his favour is subject to the result of the suit."

11. Therefore they would contend that the petitioner who has purchased the property pending the suit and subject to the result of the suit cannot be permitted to question the Judgment and Decree. They would further contend that it is only the 2nd defendant who could question the said decree and they have not chosen to even file their written statement and participate in the suit proceedings. It is also the contention of the plaintiffs and defendants 3 and 4 that after the sale in favour of the petitioner herein had been confirmed, they had filed application A.No.4133 of 2007 seeking to implead the petitioner in C.S.No.738 of 2003 and O.A.No.724 of 2007 for an injunction restraining the petitioner from interfering with their possession and enjoyment of the suit property. On 14.06.2007 this Court was pleased to grant an interim injunction and on 30.07.2007 this Court had impleaded the petitioner herein as a party to the suit in C.S.No.738 of 2003 and the injunction was made absolute. However, the petitioner has not sought to contest



the suit despite being impleaded as a party. The plaintiff and defendants 3 and 4 would contend that the present appeal is nothing but an attempt to stall the proceedings in O.S.No.384 of 2019.

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12. A defence is also taken that the petitioner is not a bonafide purchaser for value since they have not paid the entire sale consideration which is evident from a perusal of the sale deed executed by the 2nd defendant in favour of the petitioner. They would also submit that the petitioner has purchased the property knowing fully well that the sale was subject to the result of the suit. Having done so, they cannot now question the decree. The respondent would therefore, seek to have the petition dismissed.

13. Mr. V.K.Vijayaraghavan, learned counsel appearing on behalf of M/s Ojas law Firms would make the following submissions:

- i)The suit filed by the plaintiffs is not maintainable since the plaintiff had not sought to have their title declared to the suit property.
- ii)The plaintiffs despite being aware of the purchase by the petitioner had not sought to implead the petitioner as a party to the proceedings and sought to have the sale deed cancelled.
- iii)The suit property was the absolute property of the 1st defendant and he had mortgaged the property only for the family necessities and therefore, the mortgage was a valid mortgage.
- iv)The petitioner are the aggrieved party and being he aggrieved party they are competent to file the appeal.

14. The learned counsel would submit that the settlement deed executed by Pachai Ammal would fall within the provisions of Section 97 of the Indian Succession Act and therefore, though the settlement deed would describe the children of the 1st defendant as ultimate beneficiaries, however, since they have not been indicated as the direct beneficiaries under the settlement deed, the property would be the absolute property of the 1st defendant. He would rely upon the judgment of this Court reported in AIR 1964 MAD 80- Chinnammal and others Vs. Sri Kannikaparameshwari Diety by trustees Venkatarama Chettiar and another.



15. He would place reliance on the observation of the learned Judge that the interpretation of the settlement deed in the light of the principle of Section 97 of the Indian Succession Act by the Court below was perfectly justified. Since, the settlement deed provides that the settlee's sons and their respective male heirs were to enjoy half of the property respectively would only mean that the property is the absolute property of the respective sons. He would also rely upon the Judgment of this Court reported in 2008 - 4 L.W.790 - M/s. Tata Steel Limited, represented by its Principal Officer, Titania Business Unit, Tirunelveli. Vs. M/s. V.V.Minerals through its partners Mr.S.Vainkundarajan and others. to bring out the difference between impleading a party to the suit and granting leave to a third party to file an appeal. He would rely upon the judgment of the Hon'ble Supreme Court reported in 2020 (9) SCC 501 - V.N.Krishan Murthy and another Vs. Ravikumar and others. to elaborate on the expression, person aggrieved to be a person whose right or interest is adversely affected or jeopardize. The learned counsel would submit that applying the above ratio the petitioner is an aggrieved person and has therefore be granted leave to file the appeal.

16. Per contra Mr.M.Raja Raman learned counsel appearing on behalf of the plaintiffs and defendants 3 and 4 would submit that the sale in favour of the petitioner itself was a fraudulent sale made with the intention of removing the property out of the reach of the plaintiffs and defendants 3 and 4. He would submit that the auction was conducted pending the suit and both the auction notice as well as the sale deed executed in favour of the petitioner clearly stipulates that the sale is subject to the result of the suit C.S.No.738 of 2003 (O.S.NO. 2845 of 2015). Therefore the petitioner has purchased the property knowing fully well that this sale was subject to the result of the suit, once the suit was decreed in favour of the plaintiff the petitioner cannot seek to question the sale more particularly when the same has not been questioned by the mortgagee, namely, the 2nd defendant herein.

17. The learned counsel would also submit that another indication of the sale being a fraudulent one is obvious from a mere perusal of the sale consideration that has been paid by the petitioner. He would submit that 50% of the sale consideration has been paid in the form of deposit receipts and that apart the petitioner has not adhered to the schedule fixed as per the terms of the auction notice. As per the terms of the auction notice the successful bidder was obliged to pay 25% of the purchased money as soon as his bid is accepted and the remaining 75% was to be paid within 15 days from the date of acceptance of the bid by the mortgagee.



18. He would submit that a perusal of the recitals in the sale deed would clearly indicate that the petitioner has not paid the 25% on the date of the bid being accepted and the 75% within the 15 days from the date of acceptance. He would draw the attention of the Court that public auction was held on 04.05.2006 and the payment of the 25% was completed only on 12.01.2007 on the date of execution of the sale deed. That apart, the balance sum of Rs.15,18,000/- has been paid by way of fixed deposits receipts from various depositors accounts through the original bidder Ajay H.Bhat. The details of these depositors and the amounts standing to each of his deposit and the date of their maturity etc., has not been provided for and the consent of these depositors has also not been obtained, therefore, it is the contention of the learned counsel that the entire sale consideration has not been paid and the payment was also not in keeping with the terms of the auction sale. Therefore, he would submit that the petitioner is not a bonafide purchaser.

19. The learned counsel would further submit that a mere perusal of the settlement deed which has been marked as Ex.A.3 would clearly show that the ultimate beneficiaries under the settlement deed are the children of the 1st defendant and the 1st defendant was only given a life interest with an express prohibition against alienating or encumbering the property. The learned counsel would submit that Section 97 of the Indian Succession Act would not apply to the present case and even assuming without admitting that the same would apply, to the 3rd illustration under the said Section clearly provides that where a bequest is made to A for life and after his death of A the property belongs in equal shares to all persons who then answer of description of issue of A.

20. He would further contend that the subsequent purchaser that too under an auction sale which is subject to result of the suit is not required to be heard when the original mortgagee has not challenged the judgment and Decree in the suit wherein the mortgage deed so held to be null and void and invalid. The learned counsel would submit that the subsequent purchaser has no locus standi to question the Judgment and Decree. He would further argue that the said petitions are belated and the judgment had been rendered as early as in the year 2017 and the subsequent suit had been filed in the year 2019. The present application has been filed only in the year 2021 nearly 4 years after the Judgment and Decree in O.S.No.285 of 2015 and 2 years after the filing of the suit O.S.No.384 of 2019. The learned counsel would contend that the petitioner has forcefully taken possession of the property despite orders of injunction of this Court in O.A.No.724 of 2007. The petitioner had threatened the tenants to attorn tenancy in their favour and had been



collecting the rents as well as the advance. He would submit that the petitioner has recovered more than what he has invested in the sale. He would submit that the petitioner was not entitled to the grant of leave.

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21. The learned counsel would further submit that although the auction purchaser has purchased the property pending the suit where the plaintiff have contended that under the settlement deed Ex.A.3 the property would devolve only upon the plaintiffs and defendants 3 and 4, in the sale deed executed in favour of the petitioner and marked as Ex.A.8, there is no reference to the settlement deed which is a deliberate and fraudulent omission.

Discussion:

22. Heard the learned counsels and perused the records.

23. The petitioner is the auction purchaser pending the suit and after being put on notice that the sale in his favour was subject to the ultimate result of the suit. Therefore, the petitioner has purchased the property being fully aware of the risk that they were taking. The petitioner cannot be heard to question the Judgment and Decree that in O.S.No.2485 of 2015, as it is brought to the notice of this Court that pending the suit before this Court in C.S.No.738 of 2003 the petitioner had been impleaded as a party to the suit on 30.07.2007 by orders in A.No.4133 of 2007. Having failed to participate in the proceedings despite being brought on record the petitioner cannot now contend that he has not been made a party to the proceedings which is a blatant falsehood. Having deliberately stayed away from the proceedings despite being aware of the pendency of the suit and the relief claimed, the petitioner cannot now seek to question the Judgment and Decree passed in O.S.No.2485 of 2015. That apart, the petitioner is only an auction purchaser and that too after notice about the pending proceedings and on condition that his sale would be subject to the result of the suit. In these circumstances the petitioner cannot be permitted to question the Judgment and Decree passed in O.S.No.2485 of 2015 by the II Additional Civil City Judge, Chennai. That apart, the person who can question the validity of mortgage is only the 2nd defendant, the mortgagee. The 2nd defendant has not questioned the Judgment and Decree nor have they participated in the proceedings.

24. Another argument that has been put forward by the plaintiff and defendants 3 and 4 is that the petitioner has not paid the entire sale consideration and has also not kept to the payment schedule as provided under the terms of the auction. A perusal of the auction notice which has been filed in the typed



set of paper would indicate that as per clause 5 of the conditions of sale the auction purchaser was to deposit 25% of the purchased money immediately on the auction being concluded in his favour and the balance within 15 days.

Condition No.5 would read as follows:

" The purchase shall pay into the hand of the Auctioneers immediately after the property is knocked down, a deposit of 25% of the purchase money and shall sign a copy of the conditions of sale acknowledging the purchase and shall pay the residue of the purchase money to the auctioneers within 15 days from the date of acceptance of the bid by the Mortgagee when the purchase is to be completed. The arrears of corporation taxes, land taxes, Betterment levy and other taxes if any, shall be paid by the purchaser.

25. Condition No.6 provides for the consequences if any of the conditions are violated and would read as follows:

" If the purchase neglects or refuses to comply with above conditions or any of them, the deposit money shall forfeited to the mortgagee and shall not be returnable and the auctioneers shall thereupon and without any notice to the purchaser/Mortgagor be at liberty to re-sell the property either by public auction or by private treaty and deficiency if any, arising from such re-sale together with all the expenses attending the re-sale shall be made good by the defaulting purchase to the mortgagee and in case of any advantages shall forfeit the same.

26. In the light of the above, when the recital in the sale deed dated 12.01.2007 regarding the payment of the sale consideration is taken into account it clearly shows that the condition No.5 has been violated. 25% of the sale consideration has not been paid on the date of the auction but has been paid only on the date of the sale deed with only a sum of Rs.4,75,000/- being paid on the date of auction. That apart the balance amount of Rs.15,80,000/-has not been paid as per the condition No.5. Condition No.5 stipulates that the residue purchase money shall be paid to the auctioneer within 15 days from the date of acceptance of the bid by the mortgagee. The sum of Rs.15,80,000/- has been paid in the form of fixed deposit receipts standing in various depositors accounts which in effect means that the balance 75% has also not been paid. It is therefore, clear that the sale in favour of the petitioner appears to be a collusive sale/collusion between the 2nd defendant and the petitioner herein. The learned counsel for the plaintiff and defendant 3 and 4 had relied on the Judgment



reported in 1992 (1) MLJ 47- The Deputy Commissioner, H.R. & C.E. Department, Tiruchirapally Vs. S. Rama Iyengar and another regarding the locus standi of an auction purchaser to intervene in the proceedings. In that case the Court had held that when the confirmation of sale was subject to orders of Court no right would percolate to the auction purchaser till the sale is confirmed and therefore held that purchaser cannot intervene in the proceedings. The said Judgment applies on all force to the facts of this case. Further, in the instant case, the very sale in favour of the petitioner was subject to the result of the suit O.S.No.2485 of 2015.

27. Therefore, once the suit has been Decreed in favour of the plaintiff the petitioner cannot be permitted to question the said Judgment and Decree more particularly when he has deliberately chosen not to participate in the proceedings despite being impleaded as a party.

28. The learned counsel for the petitioner had put across an argument that the settlement deed executed by Pachai Ammal would be hit by the provisions of Sec.97 of the Indian Succession Act, and has relied on the judgment reported in AIR 1964 MAD 80 - Chinnammal and others Vs. Sri Kannikaparameshwari Diety by trustees Venkatarama Chettiar and another. To appreciate the above argument it is necessary to analyze certain provisions of Part VI of the Indian Succession Act which deals with Testamentary Succession. Part VI, which is an elaborate portion of the Indian Succession Act, consists of 23 Chapters. Section 57 which is found in the introductory Chapter I deals with the application of certain provisions of the Part to a class of Wills made by Hindus etc., and it reads as follows:

[57.] Application of certain provisions of Part to a class of Wills made by Hindus, etc. - The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply -

(a) to all Wills and Codicils made by Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and Codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits; and



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(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applicable by clauses (a) and (b):]

Provided that marriage shall not revoke any such Will or codicil.

29. Section 58 talks about the general application of the part and it proscribes that Part VI shall not apply to testamentary property of any Mohammadan nor to testamentary succession to the property of any Hindu, Buddhist, Sikh or Jain except to the extent provided under Section 57.

30. Section 57 extracted supra provides that the provisions of Part VI shall apply subject to the restrictions and modifications specified in Schedule III.

31. Schedule III sets out the provisions of Part VI applicable to the Wills and codicils described in Section 57 and the Schedule does not include Section 97. The Schedule further provides the restrictions and modifications in the application of those provisions described as applicable. The Judgments in AIR 1964 MAD 80 - Chinnammal and others Vs. Sri Kannikaparameshwari Diety by trustees Venkatarama Chettiar and another, has not dealt with Section 57 and Schedule III of the Indian Succession Act and this Court is therefore not relying upon the same.

32. In the light of the above discussions, the arguments based on Section 97 of the Indian Succession Act has to necessarily be rejected.

33. On a conspectus of the above this Court holds that the petitioner cannot be granted leave to challenge the Judgment and Decree of the II Additional Judge City Civil Court, Chennai in O.S.No.2485 of 2015. C.M.P. No.11899 of 2021 is dismissed and consequently A.S.SR.No.44900 of 2021 also stands dismissed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The II Additional City Civil Court,
Chennai.

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+2ccs to M/s Ojas Law Firm, Advocate, S.R.No.55796
+1cc to Mr.M.Raja Raman, Advocate, S.R.No.55587

CMP.No.11899 of 2021
in As.Sr.No.44900 of 2021

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