



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2079 of 2021

and

C.M.P.No.15818 of 2021

R.Kuppayammal

...Petitioner

Vs

1.Devaraj

2.M.Arunavadivel

...Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and decreetal order dated 09.04.2021 made in I.A.No.4 of 2020 in O.S.No.202 of 2013 on the file of Ist Additional Subordinate Court, Erode.

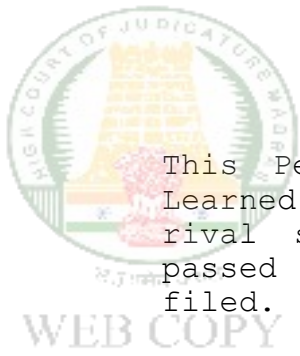
For Petitioner : Mr.C.E.Pratap.

O R D E R

This petition is filed challenging the order passed in I.A.No.4 of 2020 in O.S.No.202 of 2013 by the I Additional Subordinate Judge, Erode on 09.04.2021.

2.The Second Respondent herein filed a Suit in O.S.No.202 of 2013 for partition against the Petitioner. Pending the Suit, the First Respondent filed Interlocutory Application in I.A.No.262 of 2016 for impleading him as Defendant on the ground that the Second Respondent sold the Suit properties to him under four registered sale deeds dated 12.09.2013 and 19.03.2014. It is claimed by the First Respondent that he is in possession and enjoyment of the Suit property. The Second Respondent has not filed any Application for amending the plaint for adding the First Respondent as Defendant in the Suit. Therefore, the Suit was dismissed on 01.02.2018.

3.Then the Second Respondent filed I.A.No.219 of 2018 to restore the Suit without showing the First Respondent as a party in the Application filed in the Suit and by playing fraud suppressing the fact that the Suit was dismissed for default for not amending the plaint. The Second Respondent and the Petitioner collusively obtained a decree on 30.11.2018. Therefore, I.A.No.4 of 2020 was filed to set aside the fraudulent and collusive preliminary decree dated 30.11.2018.



This Petition was contested by the Second Respondent. The Learned I Additional Subordinate Judge, Erode on considering the rival submissions allowed the Petition. Against the order passed in I.A.No.4 of 2020, this Civil Revision Petition is filed.

4.The Learned Counsel for the Petitioner submitted that the First Respondent cannot seek to set aside the preliminary decree for the reason that the remedy open to him is only to file an Appeal and not to file an Application to set aside the preliminary decree.

5.Considered the submissions of the Learned Counsel for the Petitioner and perused the records.

6.It is a Suit for partition filed by the Second Respondent against the Petitioner claiming 1/2 share in the Suit properties. It appears that both the parties accept that they have 1/2 share in the Suit properties. However, it is seen from the submission made by the First Respondent before the trial court that the Second Respondent had sold the Suit properties to him through four registered sale deeds dated 12.09.2013 and 19.03.2014. He filed an impleading Petition in I.A.No.262 of 2016 and it was allowed on 04.01.2018.

7.Subsequently, the Suit came to be dismissed for default for the reason that the Second Respondent who is the Plaintiff has not taken steps for amending the plaint for impleading the First Respondent as Defendant in the Suit. Then the Second Respondent filed an Application in I.A.No.219 of 2018 to restore the Suit without impleading the First Respondent and without giving notice to him and obtained a decree. The order of the Learned I Additional Subordinate Judge, Erode narrates these facts. It was also observed that the Court has also not directed the Second Respondent to comply with the direction passed in the Suit on 04.01.2018 to amend the plaint. Without taking such a recourse, decree came to be passed. Due to this mistake, the First Respondent lost his valuable right to defend the Suit by projecting the sale deeds of the Suit properties. Taking all these factors into account and considering the right claimed by the First Respondent on the basis of sale deeds in his favour, the Learned I Additional Subordinate Judge, Erode was pleased to allow the Petition in I.A.No.4 of 2020 and set aside the decree dated 30.11.2018.

8.From the submissions made and order of the Learned I Additional Subordinate Judge, Erode, it is clear that after the impleading Petition in I.A.No.262 of 2016 was allowed, the Second Respondent / Plaintiff has not taken any steps to amend the plaint. Therefore, the Suit was dismissed. Then, without



adding the First Respondent as party, I.A.No.219 of 2018 was filed for restoring the Suit which was also allowed and preliminary decree came to be passed.

9.In the considered view of this Court, this preliminary decree was passed without impleading the First Respondent as party in the Suit is not in accordance with law and needs to be set aside, which was rightly done by the Learned I Additional Subordinate Judge, Erode. This Court finds no reason to interfere with the order of the Learned I Additional Subordinate Judge, Erode and the order of the Learned I Additional Subordinate Judge, Erode is confirmed.

10.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ay/ep

To

The I Additional Subordinate Judge,
Erode.

Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

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NSK 02/11/2021