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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD)Nos.3848 & 3850 of 2019
and
CMP.No.25387 of 2019

[Through Video Conferencing]

P.Saradha ... Petitioner/Proposed party
in both CRPs.
vs.

1.Sakunthala ... 1st respondent / Plaintiff
in both CRPs.

2.Padmini
3.Shanmugam
4.Anandhan
5.Radha
6.Indirani
7.Govindaraji
8.Jayalakshmi
9.Jegan
10.Settu @ Paranthaman
11.Kili @ Punitha
12.Mahadevi
13.Kasthuri
14.Savithiri
15.Selvi
16.Poongodi
17.Chinnammal

... Respondents / Defendants
in both CRPs.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 23.09.2019 made in I.A.No.1 of 2019 in I.A.No.75 of 2019 in O.S.No.5 of 2012 on the file of the Sub Court, Thirupathur by allowing these Civil Revision Petitions.

For Petitioner in both CRPs : Mr.N.Manoharan

For R1 in both CRPs : Mr.Suresh Madhavaraj

For R2 in both CRPs : Mr.Elizabeth Ravi



COMMON ORDER

O.S.No.5 of 2012 had been proceeding in its normal course before the Sub Court at Tirupattur. It is a suit for partition. Though it may not be germane, a small description of the parties would be of much convenience to discuss the facts.

2.The plaintiff is the daughter of the 1st defendant. The other daughters of the 1st defendant are D6, D7, D14 and D15. The 1st defendant also had a son namely the 3rd and the 4th defendants. The 4th defendant died. His son is the 5th defendant.

3.Complication, arose because pending the suit, the 1st defendant appears to have executed a Settlement Deed with respect to the entire property which is the subject matter of the suit in favour of the 5th defendant namely his grandson. The 5th defendant for good measure, also appears to have executed a document and had executed a Settlement Deed in favour of his wife. This has brought in further complication.

4.The wife filed I.A.No.1 of 2019 and I.A.No.75 of 2019.

5.In I.A.No.75 of 2019, the relief sought is to be impleaded as a defendant in the suit. It must also be stated that the Settlement Deed, according to the said petitioner / wife of D5 / proposed defendant was pursuant to a Registered Will executed prior to the institution of the suit by the deceased 1st defendant. Therefore I.A.No.1 of 2019 had been filed to produce that particular Will as a document. Two separate orders were passed in both the applications. Both applications were dismissed by order dated 23.09.2019.

6.Let me take up for discussion of I.A.No.1 of 2019. The revision petition filed against I.A.No.1 of 2019 is CRP No.3848 of 2019.

7.In I.A.No.1 of 2019, which had also been filed by the revision petitioner / proposed party to the suit, permission was sought to produce a document which is the Will executed by the 1st defendant. Subsequent to the execution of Will and pending the suit, the very same property which was covered under the



said Will had been settled by the 1st defendant in favour of the 5th defendant. Once that document came in to existence, the Will goes in to the background. Proving the Will may not be to the advantage of any of the parties except that, to show the intention of the 1st defendant was always to deal with the property and he had such intention even on the date of execution of Will and had confirmed such execution by way of the Settlement Deed.

8.It is only to that limited extent that the document can be looked in to but for no other purpose. A statement in that regard is also sufficient. It is a Registered Will. Even if the Will is set aside or even if the Will could not be proved in the manner known to law still the Settlement Deed would stand and I am informed that the Settlement Deed has been produced as a document and it has been marked as a document.

9.I have no reason to interfere with the said order passed in I.A.No.1 of 2019. Accordingly, CRP No.3848 of 2019 is therefore dismissed.

10.Now, let me take up the order in I.A.No.75 of 2019.

11.Here it is to be noted that the revision petitioner/applicant in I.A.No.75 of 2019 by way of Settlement Deed claims title to the entire property over which the parties to the suit have been litigating from the year 2012 by expecting it to be divided and shares allotted to each one of them.

12.Now that particular hope is seriously challenged by way of execution of the Settlement Deed. The learned Sub Judge at Thirupattur had not granted permission for the revision petitioner to be impleaded as a party by holding that the Settlement Deed itself is hit under Section 52 of the Transfer of Property Act.

13.It is to be noted that if any property which is the subject matter of a lis is dealt with by the parties, it will be to their advantage if leave is obtained from the Court. If leave is not obtained, the question of valid title can always be raised but whether the document itself is void or not will have to be decided depending on various other circumstances surrounding the execution of the document.



14. Therefore, let me not enter into a discussion on that aspect which is the privilege of the learned Sub Court at Thirupattur to examine. The only aspect is that it is admitted that the said document namely Settlement Deed was executed pending a suit for partition. Therefore, the revision petitioner will have to submit to any Preliminary Decree or any other order passed in the suit. The revision petitioner cannot claim any larger right owing to the fact that Settlement Deed has been executed. Her right will always be subject to the findings in the suit. It is always better that she is made as a party to the suit. Under Order I Rule 10 quite apart from the consideration that whether the revision petitioner is a proper and necessary party, one another aspect is to examine whether any order passed or Judgment passed in the suit would affect the interests of the proposed party. If a preliminary decree is passed certainly, whether the Settlement Deed gives a legal right or not, the interest of the proposed party would be affected and she will necessarily have a right to claim audience before any order is passed in the suit.

15. I would allow the C.R.P.No.3850 of 2019 and permit the revision petitioner to be impleaded the party as a defendant in the suit. I would again reiterate that she cannot have a larger right owing to the Settlement Deed in her favour, but rather than any decree passed by the Court would bind all the parties to the suit and to that extent, and from that angle also she would be a necessary party to the suit itself.

16. I would revert the issue back to the Court to proceed further to continue with the trial from the stage where it was prior to the filing of the two Interlocutory Applications. Consequently, the connected miscellaneous petition is also closed. No order as to costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

ssi

To

1. The Sub Court,
Thirupattur.



2.The Section Officer,
V.R.Section,
High Court, Madras.

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+2ccs to Mr.N.Manokaran, Advocate, S.R.No.34573,34574

+1cc to M/s.Elizabeth Ravi, Advocate, S.R.No.34529

+1cc Mr.M.Suresh,Advocate, S.R.No.34530

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VG-II (CO)
SU (25/08/2021)