



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.07.2022

ORDERS DELIVERED ON : 19.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. Nos.709 and 2078 of 2019

CRP.709 of 2019:

E.Vedapuri

..Petitioner/Plaintiff

Vs

1.R.Anjali Devi

2.Sampath

3.S.Amudha

..Respondents/Defendants

C.R.P. No.2078/2019:

1.Sampath

2.Amudha

..Petitioners/defendants 2 and 3

Vs

Vedapuri

..Respondent/Plaintiff

Prayer in C.R.P. No.709 of 2019: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 26.11.2018 in I.A.No.448 of 2018 in O.S.No.427 of 2009 on the file of the Court of the Subordinate Judge, Tambaram.

Prayer in C.R.P. No.2078 of 2019: Civil Revision Petition filed under Article



227 of the Constitution of India, against the order dated 18.01.2018 in I.A.1206 of 2011 in O.S.No.427 of 2009 on the file of the Court of the Subordinate Judge, Tambaram.

For Petitioners/Defendants : Mr.K.Elangoo
(CRP.2078/2019-Petitioners counsel)
For respondent/Plaintiff : Mr.P.G.Perumal Pandian
(CRP.709/2019-Petitioner counsel)

COMMON ORDER

The above civil revision petitions are filed as against the orders passed by the trial court in I.A.No.1206 of 2011 dated 18/01/2018, whereby the defendants prayer for directing the plaintiff to value the suit, amend the plaint and to pay the appropriate court fee and taking the subject matter as preliminary issue, has been dismissed and the other order passed in I.A.No.448 of 2018 dated 26.11.2018 whereby the plaintiff's prayer to receive the documents was also dismissed.

2. The facts necessary for the disposal of the above civil revision petitions is that the petitioner in CRP.No.709 of 2019 is the plaintiff who filed O.S.No.427 of 2009. The respondents 2 and 3 are the purchasers of the suit property from the 1st defendant. Vendor is the 1st defendant.



WEB COPY

3. Originally the suit property was purchased by vendor's husband on 20.04.1991 and he died intestate on 18.12.1993. Hence the property was succeeded by vendor's wife Anjali Devi and another legal heir that is plaintiff's mother.

4. The respondents 2 and 3/defendants 2 and 3 said to have jointly purchased the property from the 1st defendant's husband. According to the plaintiff, his mother died on 30.12.2007 and so he filed the suit claiming his mother's share in the suit property.

5. Pending suit, the plaintiff filed I.A.No.448 of 2018 to condone the delay in filing the document and to receive the document i.e., Will executed by his mother. Defendants filed counter and resisted the I.A. The trial court, on analysis of pleadings and counter, found that suit is of the year 2009, Will produced is of the year 2007, there is no clear explanation by the plaintiff as to how he obtained the said Will after 11 years of the date of the Will and after 9 years of the filing of the suit. The learned Judge also found that in the said Will, so many property were shown in "A" Schedule and the plaintiff has not stated anything about the non inclusion of 'A' schedule of the Will in



the suit schedule as well as in the I.A., hence, the marking of the document is irrelevant to the subject matter in issue and defers cause of action of the suit. On such findings, the learned Judge, dismissed the I.A., filed by the plaintiff.

6. On the other hand, the defendants filed I.A.No.1206 of 2011 seeking for a direction to the plaintiff to value the suit appropriately, amend the plaint to the suit requirement and to pay the appropriate court fee payable on the plaint by taking the subject matter as preliminary issue and if not, to reject the plaint.

7.The plaintiff filed counter in the above said I.A., and sought to dismiss the said I.A.

8. The learned Judge, on elaborate discussion, found that the plaintiff sought for preliminary decree of partition of his 1/ 2 share in the suit property; the pleadings in the plaintiff is that the plaintiff by stating that the suit property was originally purchased by the 1st defendant's husband who is the elder brother of the plaintiff and he has no issues and he died intestate



WEB COPY

and so the 1st defendant and plaintiff's mother succeeded the properties of the 1st defendant's husband as his next legal heirs and 1st defendant is not the absolute and exclusive owner of the property on the death of her husband E.Rangan and plaintiff's mother executed a registered Will in favour of the plaintiff with respect to her share in the 1st defendant's property and she also caused legal notice to the 1st defendant and later plaintiff's mother also died and after her death, the plaintiff issued legal notice to the 1st defendant and she evaded and tried to execute some documents in favour of 2nd and 3rd defendants, and in the 'B' Schedule suit property.

9. The learned Judge, has given the reasonings to dismiss the said I.A. filed by the defendants 2 and 3 that whether the contentions of the plaintiff and his claim or entitlement to a share and whether the plaintiff is in joint possession and enjoyment of the suit property or not and as to whether the court fee paid is sufficient or not and whether the defendants 2 and 3 are the bonafide purchasers of the suit property or not, to be determined after completion of full trial only.



WEB COPY

10. The learned Judge also pointed out that if the value of the property and the payment of court fee are correct or not can be determined only after completion of trial and at that time, the court can direct the plaintiff to pay necessary court fee on the value of the property and so there is no necessity to frame it as preliminary issue with respect to the joint possession of the suit schedule property, value of the suit schedule property and the court fee aspects.

11. Even though, before this court the learned counsel for the petitioner/plaintiff advanced his argument that the plaintiff found the registered document just a week before the interlocutory application and plaintiff as P.W.1 has stated about the existence of the registered will in his deposition and the oral evidence requires him to exhibit the document in support of his claim over the suit schedule property, the findings of the learned Judge, in dismissing the said I.A., holding that there is no clear explanation as to how he obtained the Will after 11 years of the date of the Will and after 9 years after filing of the suit is not clear and so negated the prayer of the plaintiff, which reasoning, in the considered opinion of this court, cannot be said to be erroneous and so there is no infirmity in the order



passed in I.A.No.448 of 2018.

WEB COPY

12. Insofar as the case in CRP.No.2078 of 2019 is concerned, it is contended by the learned counsel for the petitioners/defendants 2 and 3 that the plaintiff's claim of his right arisen only in the year 2007 whereas the suit property was purchased in the year 2004, and they constructed and dwelling in the property, so the question of joint possession would not rise in the present case, and so the valuation of the suit property, is utmost necessary.

13. In any event, this court after going through the entire typed set of papers, is in complete agreement with the views of the learned Judge, trial court, who dismissed the said I.A., on a concise finding that the issues regarding joint possession and enjoyment of the suit property, court fee, bonafide purchasers, valuation of the property are all matters to be decided only after full trial. The said findings and reasonings by the learned Judge cannot be found fault with.

14. In the result, finding no interference to the orders passed in I.A.1206 of 2011 and 448 of 2018, the above civil revision petitions are



dismissed. No costs.

WEB COPY

19.10.2022

Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

To

1. The Subordinate Judge, Tambaram.
2. The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



J.NISHA BANU, J.

Nvsri

C.R.P. Nos.709 and 2078 of 2019

19.10.2022