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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.960 of 2019
and CMP.No.6318 of 2019

1.T.Shanthi
2.S.Vasantha
3.Devika
4.Bhavani
5.Rajeshwari
6.Revathi ... Petitioners

Vs.

T.Ravishankar ... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in IA.No.270 of 2017 in OS.No.76 of 2012 on the file of Additional District Munsif Court at Kancheepuram dated 30.10.2018 by allowing this civil revision petition with costs.

For Petitioners : Mr.K.Dhananjayan

For Respondent : Mrs.S.Thamizharasi

ORDER

This civil revision petition has been filed to set aside the fair and decretal order passed in IA.No.270 of 2017 in OS.No.76 of 2012 on the file of

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Additional District Munsif Court at Kancheepuram dated 30.10.2018, thereby allowed the petition seeking amendment of the plaint.

2. Heard, the learned counsel for the petitioners and the learned counsel for the respondent.

3. Initially the respondent filed suit for declaration declaring the suit property in his favour and also consequent permanent injunction in respect of the suit property. Immediately the petitioners filed written statement on 11.08.2012 stating that already the first defendant who is being the mother of the plaintiff and the defendants 2 to 7 executed settlement deed in favour of defendants 2 to 7 and the plaintiff herein dated 20.01.2012. Therefore, they also prayed for counter claim that the settlement deed dated 20.01.2012 executed in favour of the plaintiff and the defendants 2 to 7 as valid one. After examining DW2 and after marking Ex.B1 to Ex.B7, the respondent herein has come forward with the petition to amend the prayer in the suit, thereby to include the prayer of declaration declaring that the settlement deed executed by the deceased first defendant in favour of the petitioners as well as the respondent as null and void.

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4. On perusal of affidavit filed in support of the application for amendment, the respondent came to knowledge about the execution of settlement deed dated 20.01.2012 in favour of the respondent and the petitioners even before two weeks prior to filing of the suit. However, he did not have the copy of the same and as such he did not challenge the settlement deed. Only after marking the settlement deed as Ex.B1, he had an occasion to go through the said document and filed application for amendment to include the prayer of declaration declaring the settlement deed as null and void. Therefore, even prior to the suit, the respondent had knowledge about the settlement deed and even after filing the written statement, the respondent had knowledge about the settlement deed. Even then, the respondent failed to come forward to file any application for amendment to include the prayer to challenge the settlement deed. Only after a period of five years, the respondent filed this petition, that too after commencement of trial. In fact, the petitioners themselves filed written statement along with counter claim with the prayer that the settlement deed dated 20.01.2012 executed by the first deceased defendant in favour of the petitioners and the respondent is valid under law. Therefore, the respondent need not seek for separate prayer for declaration

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declaring the settlement deed as null and void. Therefore, there is infirmity in the order passed by the court below and it warrants interference by this Court.

5. Accordingly, the fair and decretal order passed in IA.No.270 of 2017 in OS.No.76 of 2012 on the file of Additional District Munsif Court at Kancheepuram dated 30.10.2018 are set aside and this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

20.12.2022

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
The Additional District Munsif Court
at Kancheepuram

CRP.No.960 of 2019

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