



CRP No.1987 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1987 of 2016

Abner Cesar

..Petitioner

Vs.

1.L.Manogaran

2.Amelia @ Cholothine Marie Emma

3.Vinayagam

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decreetal order dated 29.01.2016 in E.A.No.194 of 2001 in E.P.No.37 of 2000 in O.S.No.173 of 1999 on the file of the Principal Sub-Judge, Puducherry by allowing the civil revision petition.

For Petitioner : Mr.K.Sasindran

For Respondents : No appearance

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 29.01.2016 passed in E.A.No.194 of 2001 in E.P.No.37 of 2000 in O.S.No.173 of 1999 on the file of the Principal Sub-Judge, Puducherry, thereby allowing the petition filed by the first respondent under Order 21 Rule 58 r/w



Section 151 of CPC to exclude the schedule mentioned property in the Execution proceedings.

2. The petitioner filed an Execution Petition in E.P.No.37 of 2000 for execution of sale deed in his favour on the strength of the judgment/decreed passed in O.S.No.173 of 1999. According to the petitioner, he had entered into an agreement for sale in respect of the schedule mentioned property for a total sale consideration of Rs.44,000/- and paid a sum of Rs.43,000/- as advance. Thereafter, the second respondent did not come forward to execute the sale deed as agreed by him. Hence the suit. It was decreed. On the strength of the decree, the petitioner filed an Execution Petition. Pending the said Execution Petition, the first respondent filed an application under Order 21 Rule 58 r/w Section 151 of CPC to exclude the schedule mentioned property from the Execution Petition.

3. According to the first respondent, the schedule mentioned property is an ancestral property of her ancestor and they were in continuous possession and enjoyment of the property. While being so, one V.Arumugam, attempted to trespass into the schedule mentioned property and hence, the first respondent filed a suit as against the said V.Arumugam in O.S.No.697 of 1997 and



obtained decree in her favour on 24.12.1997. While being so, two persons namely Josephine Pauline Rosalie Langrange and Joseph Aroquiassamy Paul Lagrange were alleged to have executed a deed of Power of Attorney in favour of one Alphonse Zafari in the office of the French Embassy in Combodia in respect of the suit schedule property. The said Alphonse Zafari died in Bourg-la-Reine, Cambodia on 17.03.1980. However, the second respondent created a deed of General Power of Attorney in his favour, as if it was executed by said Alphonse Zafari at Pondicherry and on the strength of the said general Power of Attorney, he entered into an agreement with the petitioner herein only to grab the suit schedule property.

4. In support of his contention, the first respondent marked Exs.P1 to 7 and the second respondent marked Ex.R1. The first respondent was examined as PW1. On perusal of documents revealed that the said Alphonse Zafari died as early as on 17.03.1980 and therefore, he could not have executed any Power of Attorney as alleged in the plaint in favour of the second respondent herein. The said death certificate was marked as Ex.P6. Therefore, the Court below rightly allowed the petition and excluded the suit schedule property from the Execution proceedings. It is also seen that the said suit was collusive one between the petitioner and the second respondent herein and an ex-parte decree



CRP No.1987 of 2016

was obtained. Therefore, it cannot be a executable one and the Court below rightly allowed the petition filed by the first respondent. The third respondent also filed an impleading petition and the same was allowed.

5. In the result, the civil revision petition stands dismissed. No costs.

07.12.2022

Speaking/Non-speaking order

Index : Yes/No

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To

The Principal Sub-Judge, Puducherry



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CRP No.1987 of 2016

G.K.ILANTHIRAIYAN.J.

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CRP.No.1987 of 2016

07.12.2022