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CRP.No.568 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2022

PRONOUNCED ON : 12.07.2022

C O R A M :

The Hon'ble Mrs. Justice **J. NISHA BANU**

Civil Revision Petition (PD).No.568 of 2014

and

M.P.No.1 of 2014

Mohamed Naveed Hashmi

...Petitioner/17th defendant

Vs.

Khadira Begum (deceased),

1.Md.Kabeer

2.A.R.Muthahar

3.Waheeda

4.Adila

5.Wajida

..Respondents 1 to 5/Plaintiffs 2 to 6

Md.Abdul Hai (decd)

M.G.Mahaboob (decd)

Abdullah (decd)

Bijan Bi (decd)

Zkira Ghouse (decd)



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6.Khalid Wahab

7.Md.Javeed

8.Rafath Yasmeen

9.Nafiz Zainab

..Respondents 6 to 9 / Defendants 6 to 9

Safiz (decd)

10.Iftakar Ahamed

11.Sahida Zainab

12.Sajjad Ahmed

..Respondents 10 to 12

/

Defendants 11 to 13

Azmathullah Hashmi

..14th defendant /14th respondent in O.S.

Struck off order in
I.A.No.10201/2000

13.Ravoofunnissa

14.Md.Haroon

..14threspondent/16thdefendant

15.Amatul Khader Badrunnisa Fahmida

..15th respondent

/18th defendant

16.Hassan Moinuddin

17.Md.Ayub

..Respondents 16 and 17

/Defendants 19 and 20.

PRAYER:Civil Revision Petition filed under Article 227 of Constitution of India as against the order dated 23.01.2014 passed in I.A.No.14614 of 2013 in O.S.No.3355 of 1994 on the file of IV Assistant Judge, City Civil Court, Chennai.



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For Petitioner : Mrs.Vasudha Thiagarajan

for Mr.R.Thiagarajan

For Respondents : Mr.S.B.Fazulddin for R1 to R5

R10 to R14 – No appearance

Mr.A.Palaniappan for R15

ORDER

This Revision Petition has been filed by the unsuccessful 17th defendant in I.A.No.14614 of 2013 in O.S.No.3355 of 1994.

2. I.A.No.14614 of 2013 has been filed by the 17th defendant praying to strike out the entire additional written statement filed by 18th defendant as derogation to the original written statement.

3. In the suit filed by plaintiff/Khadira Begum in O.S.No.3355 of 1994, Abdul Hai is the first defendant; 13 others are the other defendants. Abdul Hai passed away on 14.09.2005 after filing his written statement. After the demise of Abdul Hai, his legal representatives were brought on record.

According to the 17th defendant, the legal heirs of 1st defendant filed new written



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statement taking new defense which is impermissible in law. It was contended in I.A., that the legal heir must adopt the position occupied by their predecessors and cannot set up a new case and are bound by the proceedings taken so far as against the deceased defendant. Stating that the defense is an abuse of process of court, sought to strike out the entire additional written statement filed by the 18th defendant.

4. On the other hand, 18th defendant filed her counter in the IA., submitting that 17th defendant devised a fraudulent and fabricated affidavit dated 26.06.1989 alleging that oral Hiba was given by Mohammed Abdul Hai [deceased 1st defendant] on 15.5.1989. The said Azamathulla Hashmi (17th defendant) had resorted to rectify the settlement deed dated 14.01.2003 by means of Rectification deed dated 03.10.2008. So based on those false documents, the 17th defendant has resorted to grab the property unto himself.

5. Since Abdul Hai (deceased 1st defendant) was residing at Hyderabad and was not in a position to conduct the suit for partition, Power of Attorney was sought to be executed by him appointing the 17th defendant as his



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power agent for the purpose of conducting the suit. After the demise of 1st defendant, 17th defendant has come with false, unfounded and baseless allegation that the suit property was gifted to him by oral Hiba by fabricating a false affidavit in his favour by forging the signature of 1st defendant.

6. The 18th defendant filed additional written statement in the suit depicting the subsequent events and based upon the additional written statement filed by the 17th defendant/revision petition, cross examination was done.

7. The entirety of the additional written statement is consistent with the written statement filed by the father of 18th respondent.

8. The court below, after considering the contentions raised on both sides, found that the parties having no dispute in respect of the present suit in O.S.No.3355/1994 filed for the relief of partition and separate possession, C.S.No.74 of 2009 is filed by the 17th defendant, along with his father for declaration of title and permanent injunction, C.S.No.929 of 2009 is filed by the 15th defendant for declaration that the plaintiffs are the owners of the suit



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property and the reliefs stated therein.

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9. It is further pointed out by the learned Judge in the impugned order that 1st defendant in the suit died and 18th defendant bequeathed the property by executing a Will in her favour. Probate proceedings to be initiated are kept in abeyance awaiting the outcome of the present suit in O.S.No.3355 of 1994. Suit was originally filed for partition and the first defendant took the defense of absolute ownership and that stand has been side tracked to the extraneous aspects of alleged Hiba, Settlement deed and Will. The court observed that it regret for the delay in judicial process which renders the original dispute gets vanished at the instance of parties coming into picture after the demise of the original parties.

10. The learned Judge also noted that the court cannot harp much upon the validity of Will, Hiba, Settlement Deed, Rectification Deed etc., in a simple suit for partition and separate possession for which alone court fee has been paid by the original plaintiff.

11. The learned Judge further found that C.S.No.928 of 2000 has



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been filed by the 18th defendant impugning the validity of the Hiba and also praying for relief of affidavit of confirmation dated 20.06.1989 and settlement deed dated 14.01.2003 are to be declared as null and void. The Honourable High Court has seized of the matter and in such circumstances, the learned Judge cannot poke into the issue of validity of Hiba and settlement which are virtually incidental and not substantive to be decided in the suit for partition.

12. The learned Judge clearly pointed out that if at all any adjudication is made by the court by resolving the additional issues framed in respect of Hiba and Settlement deed, it will have adverse effect and impair the proceedings before the Honourable High Court though arose after filing of the present suit and during the pendency.

13. In respect of the written statement, it is pointed out by the learned Judge that when both defendants 17 and 18 have reaffirmed the entitlement of the first defendant in respect of the suit schedule property, their written statements cannot be discarded or brushed aside and on the contrary, could be taken into account for arriving at the capacity of the plaintiffs to seek for partition; as such, under no circumstances, either written statement of 17th



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defendant or that of the 18th defendant could be termed as an abuse of process of the court; there is no need to strike out the pleadings of 18th defendant brought on record by way of filing additional written statement.

14. The learned Judge, on clear terms, dismissed the I.A., which finding in all terms could be held to be right and in proper perspective. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article 227, orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. This court do not find any error in the impugned order dated 23.01.2014 passed in I.A.No.14614 of 2013. Accordingly, the Civil Revision Petition fails and the same is dismissed. Interim stay stands vacated. No costs.

Index :Yes/No

12.07.2022

nvsri

To



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1.The IV Assistant Judge, City Civil Court, Chennai.

2.The Section Officer, VR Section, High Court, Madras.



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J.NISHA BANU, J.

nvsri

Order in

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