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C.R.P(NPD)No.2956 of 2021

and CMP.No.21149 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No.2956 of 2021

and

CMP.No.21149 of 2021

V.Rameshkumar

..Petitioner

Vs.

T.Duraibabu (deceased)

1.G.Mohana

2.D.Malliga

3.D.Saroja

..Respondents

Prayer: Civil Revision Petition filed under Section 155 of CPC., against the fair and decreetal order of the Additional District Judge-cum-Mahila Court, Chengalpet dated 31.08.2021 passed in IA.No.2 of 2020 in AS.No.33 of 2013.

For Petitioner : Mr.P.V.Sudakar



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ORDER

Challenge in this revision is to the dismissal of an, wholly unnecessary, application for amendment of the pleadings.

2.The petitioner as plaintiff, sought for specific performance of an agreement of sale entered into between him and one Duraibabu on 30.06.2001. The suit was filed in 2005. During the interregnum, it appears that the agreement Vendor, Duraibabu had executed a settlement deed in favour of defendants 2 and 3, who are his daughters. Pending suit, the said Duraibabu died and his three daughters were impleaded as defendants 2 to 4. The Trial Court, decreed the suit for the alternative relief of refund of advance, while rejecting the prayer for specific performance. Aggrieved, the petitioner / plaintiff has filed an appeal in AS.No.33 of 2013. Pending the said appeal, upon improper legal advice, the petitioner came up with the application for amendment to include the relief of declaration that the settlement deed dated 06.09.2002, executed by Duraibabu in favour of Mohana and Malliga namely defendants 2 and 3 in the suit, registered as Document No.3654 of 2002 as null and void and not binding on the plaintiff.



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3.The learned Appellate Judge went one step further and held that the relief of declaration is barred by limitation. The entire proceedings shows total lack of application of mind both on the part of the counsel for the petitioner and the learned Sessions Judge, Mahila Court, Chengelpet. The Hon'ble Supreme Court had even in 1954 held that in a suit for specific performance, a prayer for setting aside a subsequent alienation is wholly unnecessary. The practice of the Madras High Court, to direct the subsequent purchasers or the subsequent transferors to joint execution of sale deed, was approved by the Hon'ble Supreme Court. Therefore, a prayer for declaration that the subsequent alienation is invalid is not even necessary in a suit for specific performance. All that the plaintiff has to do is to implead the subsequent transferee and seek execution of sale deed by the subsequent transferee also. The subsequent transferees are also impleaded in the suit and they being the legal representatives of the deceased first defendant, if a decree for specific performance is granted, they would be compelled to execute the sale deed.



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4. Therefore, in the given circumstances, the application for amendment was wholly unnecessary, even though the reasoning, on which the learned Sessions Judge, Mahila Court, Chengelpet has dismissed the application is erroneous, I do not see any reason to entertain this revision as the result would be the same. This civil revision petition therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.01.2022

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To-

The Additional District Judge-cum-Mahila Court,
Chengalpet.



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R.SUBRAMANIAN, J.

KKN

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