



C.R.P. No. 3618 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08.11.2022

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3618 of 2017

J.Ranganathan,
S/o. Jayaraman

... Petitioner

Versus

1. Suresh Kumar,
S/o. K. Ramdas

2. Mrs. Sakila Bai,
W/o. Suresh Kumar

3. The Tahsildar,
Thiruvallur, J.N.Road,
Thiruvallur Town and Tk.

4. The District Collector,
Thiruvallur Town and Tk.

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order of the learned District Munsif Court, Thiruvallur passed on 13.07.2017 in I.A.No.768 of 2015 in O.S.No. 213 of 2010.



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For Petitioner : Mrs.P.V.Rajeswari

For Respondents : Mr.G.A.Thiyagarajan for
M/s.Rugan and Arya for R1

Mr.B.Tamilnidhi,
Addl. Govt. Pleader for R3 & R4

ORDER

The Revision Petitioner herein is the plaintiff in a suit in O.S.No. 213 of 2010, on the file of District Munsif Court, Tiruvallur and he filed the said suit for the relief of declaration and other consequential relief against defendants 1 to 3.

2. The 1st defendant is Sakila Bai, who contested the suit by filing her written statement denying the plaintiff's right over the property. Then, during the pendency of proceedings, Sakila Bai filed an application in I.A.No. 697 of 2012 under Order 8 Rule 9 of C.P.C. praying to amend the written statement and that application was dismissed by the trial court. Thereafter, her husband Suresh Kumar filed an application in I.A.No.768 of 2015 under Order 1 Rule 10(2) of C.P.C. praying to implead himself as 4th defendant in



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the suit. The contention of her husband is that the suit property is belong to his wife Sakila Bai through a settlement deed dated 08.04.1981 and thereafter, she executed a gift deed dated 29.01.2008 in his favour. Hence, he is a necessary party to the proceedings, thereby he prayed to implead himself as 4th defendant in the suit. That application was strongly objected by the plaintiff stating that at the time of filing written statement, Sakila Bai, wife of proposed petitioner not stated anything about the alleged gift deed executed in favour of her husband. So, suppressing the said fact, she filed a written statement. Now, to drag on the proceedings, after dismissal of amendment petition, through her husband, she filed the said application. On hearing both sides, the trial judge allowed the said application holding that for effective adjudication, all the parties are necessarily impleaded. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner argued that already his wife/1st defendant suppressed the fact of execution of gift deed in favour of her husband and after dismissal of amendment application, to achieve her



object by using her husband, she filed the said application, but the same was not appreciated by the trial court. Accordingly, the relief claimed by the proposed party also barred by limitation and also the fact by principles of res judicata. Hence, he prayed to set aside the findings of the trial court.

4. The learned counsel for 1st respondent submitted that much prior to the filing of the suit, she executed a gift deed in favour of her husband on 29.01.2008. Hence, her husband filed an application to implead him as 4th defendant in the suit and the same was rightly appreciated because as on date, the property was in favour of her husband.

5. Heard and considered rival submissions made by learned counsel for Revision Petitioner as well as respondents and perused the records.

6. Considering submissions of both sides and on perusal of records, it reveals that the plaintiff filed a suit for declaration to declare his right over the property. Now, the 1st defendant and her husband/proposed party claiming right over the property based on the gift deed. However, to adjudicate the issue between the parties, the proposed party is necessary one and the same was rightly appreciated by the trial judge, which needs no interference. Accordingly, this Civil Revision Petition is dismissed.



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7. At this juncture, the learned counsel appearing for Revision

Petitioner submitted that at the earlier point, the application filed by the 1st respondent in respect of amendment was dismissed and the said findings rendered in I.A.No.697 of 2012 dated 08.04.2014 would cause res judicata, but the same cannot be decided now and the same is to be decided during trial by adducing oral and documentary evidence. Accordingly, liberty is granted to the plaintiff to raise his defence with regard to res judicata before the trial court and the trial court is also directed to frame one more issue in respect of res judicata while disposing the matter. The suit is in the year of 2010, the trial court is directed to proceed with the trial and dispose the case by giving opportunity to both parties within a period of eight months from the date of receipt of copy of this order. No costs.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

District Munsif,
Tiruvallur.

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T.V.THAMILSELVI, J.

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