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C.R.P. No. 729 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 729 of 2017
and
C.M.P. No. 3630 of 2017

Selvam,
S/o. Maruthai

... Petitioner

Versus

1. Maruthai,
S/o. Late Kathaan

2. Mani,
S/o. Maruthai

3. Sub-Registrar,
Attur, Salem Dt.

4. The District Registrar,
Salem, Salem Dt.

5. The District Collector,
Salem, Salem Dt.

6. M.Kannan,
S/o. Mani

7. Radhika,
W/o. Krishnamoorthy

... Respondents

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PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order and decreetal order dated 01.06.2016 made in I.A.No.793 of 2015 in O.S.No.163 of 2015 passed by the learned Sub-Judge, Attur, Salem Dt.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.B.Tamilnidhi,
Addl. Govt. Pleader for R3 to R5

Mr.A.Syed Mustafa for R6

R1, R2 & R7 – No appearance

ORDER

Challenging the order passed in I.A. No.793 of 2015 in O.S.No.163 of 2015 by the learned Sub-Judge, Attur, Salem, the revision petitioner preferred this Civil Revision Petition.

2. Originally, the suit in O.S.No.163 of 2015 was filed by the plaintiff for the relief of partition and other consequential reliefs against his father,



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brother and other defendants. Before filing the suit, he issued a notice to the parties stating that they shall not attempt to sell the property and not to cause any encumbrance. Subsequently, they have sold the property to (1) Kannan and (2) Radhika. Hence, the plaintiff filed an application in I.A.No. 793 of 2015 under Order 1 Rule 10(2) of C.P.C. praying to implead the purchasers as well as her vendor as proposed parties as defendants 6 and 7 in the suit. The said application was contested by the 7th respondent purchaser by filing counter objections. On hearing both sides, the trial court dismissed the said application holding that already on 09.09.2009 the plaintiff relinquished his share in respect of the property by receiving consideration and thereafter, the 2nd defendant executed a Gift deed in favour of 6th respondent/proposed party Kannan on 13.09.2009. Thereafter, the property was sold to 7th respondent/proposed party Radhika. Since the plaintiff executed a Relinquishment deed, he has no right to challenge the subsequent sale. Moreover, the plaintiff suppressed the said factum of execution of Relinquishment deed and on that basis, the said application was dismissed. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.



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3. The learned counsel for Revision Petitioner argued that he was not aware of the alleged Relinquishment deed dated 09.09.2009. He reserves his right to challenge the said document, but after filing of the suit, a portion of the property was sold to proposed 7th respondent viz., Radhika. Hence, he took necessary steps to implead the party, otherwise, his right over the property would be defeated. But, the trial court failed to appreciate this fact and erroneously dismissed the application without giving opportunity. Hence, he prayed to set aside the findings of the trial court.

4. The fact reveals that the plaintiff filed a suit against his father, brother and other defendants for the relief of partition. Before filing the suit, he issued notice. During the pendency of the suit, son of 2nd defendant sold portion of the property to one Radhika. Hence, the plaintiff filed an application to implead the vendor and the purchaser as 6th and 7th defendants in the suit. But, the contention of purchaser is that already there is a Relinquishment deed executed by the plaintiff, which was suppressed by him at the time of filing the suit. But, the plaintiff denied the alleged Relinquishment deed dated 09.09.2009. The genuineness of the Relinquishment deed is to be decided by adducing oral and documentary



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evidence. So, the opportunity has to be given to the plaintiff to implead all necessary parties to the suit, otherwise, his right to have the property would be defeated. So, to adjudicate the issue between the parties, the purchasers also necessary parties to the proceedings. But, the trial court without appreciating the fact, erroneously dismissed the application and the same is liable to be set aside.

5. In the result, this Civil Revision Petition is allowed and the order passed by trial court in I.A.No. 793 of 2015 is set aside. Liberty is given to the proposed parties to file their written statement before the trial court. However, since the suit is pending from the year of 2015, the trial court is directed to dispose the case as expeditiously as possible. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To
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1. Sub-Judge,
Attur.
2. Sub-Registrar,
Attur, Salem Dt.
3. The District Registrar,
Salem, Salem Dt.
4. The District Collector,
Salem, Salem Dt.
5. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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