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C.R.P.(MD)No.2386 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/01/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD)No.2386 of 2022

and

CMP (MD)No.11534 of 2022

Syed Ibrahim : Petitioner/Petitioner/
2nd Respondent/2nd Defendant

Vs.

Meera Moideen : Respondent/Respondent/
Petitioner/Plaintiff

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records relating to the fair order and decretal order, dated 19/10/2022 passed in IA No.212 of 2022 in IA No.119 of 2020 in OS No.566 of 2007 by the Principal Sub Court, Madurai and to set aside the same.

For Petitioner : Mr.D.Malaichamy

For Respondent : Mr.K.Sudalaiyandi

O R D E R

This civil revision petition has been filed seeking to set aside the order, fair order and decretal order, dated 19/10/2022 passed in IA No.212 of 2022 in IA No.119 of 2020 in OS No.566 of 2007 by the Principal Sub Court, Madurai.



2. The facts in brief:-

A suit in O.S No.566 of 2007 was filed by the respondent herein against the petitioner and others seeking the relief of partition and separate possession of his share. The suit was decreed in part declaring that he is entitled for 1/5th share in item Nos.1 and 2 in 'A' schedule and in 'B' schedule, he is entitled to 1/4th share. The suit was dismissed in respect of 3rd item in 'A' schedule. Against which, A.S No.38 of 2015 was preferred by the first defendant. Similarly, this petition also filed for allotting of his share, in pursuance of the order passed by the appellate court. The appeal was disposed of declaring that the first defendant is entitled to take 2nd item of 'A' schedule property towards full satisfaction of the royalty amount after depositing the rent amount of Rs.5,78,500/-. Apart from that, the first item in 'A' schedule property was allowed to the plaintiff towards his share and he was directed to get back any amount of royalty namely Rs.4,05,000/- out of the court deposit made by the first defendant.

3. In pursuance of the above said appellate court decree and judgment, the respondent filed IA No.119 of 2020 before the trial court seeking permission of the court to withdraw the amount deposited by the first



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defendant. Enquiry was ordered to be conducted in that petition. During the pendency of the enquiry in IA No.119 of 2020, a petition now impugned in this revision has taken out by the petitioner in I.A No.212 of 2022, seeking leave of this court under Order 8 Rule 1(A) of C.P.C to receive the petition mentioned document. That came to be dismissed by the trial court stating that those documents are not required for deciding the issue.

4.Aggrieved over the same, this civil revision petition is preferred by the petitioner.

5.Heard both sides.

6.As indicated above, IA No.119 of 2020 was filed by the respondent herein seeking permission of this court to withdraw the amount deposited into the court. Objection was raised by the petitioner herein challenging the preliminary decree as well as the final decree. Apart from that, it is also stated that the respondent herein namely the plaintiff executed a settlement deed, on 23/02/2021 in favour of his daughter namely M.Pajila in respect of undivided 1/4th share in the 'B' schedule property. According to him, this is not valid. So this settlement deed must be revoked. In 'B' schedule property



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the plaintiff has no right. He has not filed any application for possession of the property allowed to him in the 'A' schedule property. So during the pendency of the enquiry only, the present impugned petition has been filed seeking permission of the court to receive the documents.

7.A query was made by this court to the learned counsel appearing for the petitioner as to how he can make objection in the permission petition. Though may not be the relief for reconsideration, but relevancy of the document sought to be ascertained.

8.In reply, the learned counsel appearing for the petitioner would submit that in view of the execution of the settlement deed in 'B' schedule property, now he is making objection.

9.Whether the above said objection is valid or not is a matter for consideration by the trial court. Now the reason for the dismissal by the trial court is that the junior Advocate of the learned counsel on record has filed an affidavit and not the party. But in the affidavit itself, it has been stated that the records went missing in the Advocate's office, naturally the



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party cannot sworn the affidavit over the missing of the records. The person, who is managing the office of the learned counsel on record or junior advocate can file an affidavit. So I find that absolutely it is not a valid ground available to the trial court to reject the petition. Affidavit filed by the junior advocate on record shows that the document was misplaced in his office. So it must be given appropriate credence.

10.On that sole ground, the impugned order passed by the trial court is set aside and the petition filed by the petitioner is allowed. In the above facts and circumstances of the case, let the above said permission petition disposed of within a period of one month from the date of receipt of a copy of this order.

11.With the above said direction, this civil revision petition is **allowed**. The impugned order, dated 19/10/2022 passed in IA No.212 of 2022 in IA No.119 of 2020 in OS No.566 of 2006 by the trial court is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

29/01/2024

Index:Yes/No
Internet:Yes/No
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To,
The Principal Sub Court,
Madurai.



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G.ILANGOVAN, J

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