



CRP (MD) No.1618 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20.12.2022

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CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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S.Periyasamy

... Petitioner

Vs

1.V.Balakrishnan

2.B.Selvi

3.B.Sathya

4.P.Periyaswamy

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the civil revision petition and direct the Subordinate Judge, Karur to number the unnumbered OSSR.No.8696 of 2022 without insisting the petitioner / plaintiff to delete the defendants 2 to 4 in the plaint.

For Petitioner : Mr.S.Gokul Raj

ORDER

This Civil Revision Petition is filed as against the docket order dated 07.07.2022 in OSSR.No.8696 of 2022 by the learned Subordinate Judge, Karur.



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2.The petitioner / plaintiff has filed the above plaint in OSSR.No.8696 of 2022 for the relief of recovery of money and for declaring sale deed executed by the 2nd and 3rd respondents / defendants in favour of the 4th respondent / defendant will not bind on the petitioner / plaintiff and for permanent injunction as against the respondents to not to create any encumbrance over the suit property.

3.The case of the petitioner / plaintiff is that the 1st respondent / defendant had borrowed a sum of Rs.5,00,000/- and had issued a promissory note on 09.09.2018 and subsequently he had executed a settlement deed in favour of the 2nd and 3rd respondents/ defendants of his entire property in their names on 13.11.2018. Though he has executed a promissory note on 09.09.2018, the subsequent document has been made in order to avoid the payment pursuant to the promissory note. The 2nd and 3rd respondents have also executed a sale deed in favour of the 4th respondent / defendant on 21.03.2022. The plaint filed by the petitioner was returned on 24.05.2022 that it is not maintainable as against defendants 3 and 4 without any prayer for declaration with regard to the



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settlement deed executed by defendant 1 in favour of defendants 2 and 3. The petitioner / plaintiff has re-presented the same by referring Section 128 of the Transfer of Property Act. However it was again returned with a direction to the petitioner / plaintiff to file the suit restricting the prayer as against the 1st respondent alone and file a separate suit as against defendants 3 and 4.

4.The learned Counsel for the petitioner by referring Section 128 of the Transfer of Property Act submits that the 1st respondent having executed promissory note dated 09.09.2018 has created sham and nominal document of settlement deed dated 13.11.2018 in favour of the 2nd and 3rd respondents, they in turn have created further document in favour of 4th respondent. Section 128 of the Transfer of Property Act reads as follows:

“ 128. Universal donee.—Subject to the provisions of section 127, where a gift consists of the donor’s whole property, the donee is personally liable for all the debts due by 1[and liabilities of] the donor at the time of the gift to the extent of the property comprised therein.”



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5.Universal donee is a person who gets all the properties of immovable or movable of the donor in the gift where donor makes the gift as whole property without retaining anything for himself. The objection of Section 128 of Act is also to protect the interest of the donors.

6.In view of the above provision and the guidelines issued by this Court in *S.Parameswari Vs Denis Lurdusamy* reported in (2011) 5 CTC 742, the trial Court is directed to number the plaint and proceed in accordance with law.

7.In the result the civil revision petition is allowed. No costs.

20.12.2022

Note: Registry shall return the original papers to the petitioner

DSK

To
The Subordinate Judge,
Karur.



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B. PUGALENDHI, J.

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