



C.R.P.Nos. 247 & 506 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

C.R.P.Nos.247 & 506 of 2023

and

C.M.P.Nos.2041 & 4148 of 2023

Diagou Mudaliar Trust,
Rep., by its Present Superintendent
Mr. Arokiasamy Samuel Gnanou Diagou

.. Petitioner
in both the CRPs

Vs

1.S. Padmini
2.Damayandhi

.. Respondents
in both the CRPs

PRAYER in CRP.No.247 of 2023: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 11.11.2022 made in I.A.No.439 of 2022 in O.S.No.105 of 2009 on the file of I Additional District Munsif, Puducherry.

PRAYER in CRP.No.506 of 2023: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed on the memo filed by the petitioner dated 15.02.2023 made in O.S.No.105 of 2009 on the file of I Additional District Munsif, Puducherry.



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For Petitioner : Mr. C. Prabakaran

For Respondents : Mr. B.N. Sivagamasundari, for R1
for Mr. T.C. Gopalakrishnan
No Appearance for R2

COMMON ORDER

This Civil Revision Petition is filed challenging the impugned order passed in I.A.No.439 of 2022 in O.S.No.105 of 2009 on the file of I Additional District Munsif, Puducherry, the plaintiff has preferred this revision.

2. Before the trial Court, the plaintiff / petitioner herein filed a suit for declaration declaring that the sale deed dated 30.03.2007 executed by the first respondent in favour of the second respondent as non est in law and null and void, in the year 2009. The second defendant appeared and submitted written statement. Now the trial has been commenced. During the pendency of the trial proceeding, the second defendant filed an application to receive the partition deed dated 23.02.2022 which was executed during the pendency of the proceeding. The plaintiff raised objection to mark the said document stating that it is a fabricated one and also during the



pendency of the suit, the said document was executed. Therefore, without any pleadings the document cannot be permitted. Moreover, the parent document of the said partition deed is already challenged in the present suit. Therefore, the partition deed cannot be received as evidence.

3. On considering both submissions, the trial Judge allowed the application stating that no prejudice will be caused to the plaintiff, if this petition is allowed. Therefore, the same was allowed.

4. Challenging the same, the plaintiff / revision petitioner herein has preferred this revision.

5. The learned counsel for the revision petitioner submits that during the pendency of the proceeding, the partition deed was executed and without any statement, to that effect, suddenly they have produced the document. But the trial Judge erroneously allowed the same. Therefore, he prays to set aside the finding. For D.W.1 cross, the suit is pending. Admittedly, the said document was executed during the pendency of the suit



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proceeding and the same is hit by Section 52 of the Transfer of Property Act and also by principle of lis pendens. However, no pleading was filed with regard to the said document by the defendant before the trial Court.

6. As rightly pointed out by the petitioner counsel, the said document was produced without any proper intimation. Since the document was executed during the pendency of the proceeding, the said document cannot be received directly as evidence unless opportunity is given to the petitioner / plaintiff to dispute the validity of the document by filing the written statement.

7. Therefore, the order passed by the trial Judge in I.A.No.439 of 2022 in O.S.No.105 of 2009 on the file of I Additional District Munsif, Puducherry is set aside. The respondent is directed to file an additional written statement in respect of the said partition deed. On such statement, liberty is given to the petitioner to file a reply statement. Thereafter, the trial Court is directed to proceed with the trial as per the manner known to law.



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8. In the result,

(i) C.R.P.No.247 of 2023 is allowed. Consequently, connected miscellaneous petition is closed. No costs.

(ii) In the light of the order passed in C.R.P.No.247 of 2023, C.R.P.No.506 of 2023 stands closed. Consequently, connected miscellaneous petition is also closed. No costs.

19.10.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

To

The I Additional District Munsif, Puducherry.



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T.V.THAMILSELVI, J.

AT

C.R.P.No.247 of 2023 and
C.M.P.No.2041 of 2023

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