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C.R.P.No.703 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.703 of 2020 &
C.M.P.No.3673 of 2020

Abraham Samarendiranath Sircar

... Petitioner

Vs.

1. Sadhu A.N.Sarkar Foundation
Registration No.1691/1998,
rep. By its Managing Trustee
E.Nandakumar
119, Sastri Nagar, 3rd cross
Tondiarpet, Chennai – 600 081

2. K.Sasikumar
Proprietor,
S.M.Pharmacy,
No.13C, West Main Road,
Gandhinagar, Vellore - 6

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order of the learned District Munsif, Katpadi dated 03.12.2019 in I.A.No.499 of 2018 in O.S.No.207 of 2011.

For Petitioner

: Mr.T.M.Hariharan



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For Respondents : Mr.S.Ranjith Kumar for R1
Mr.V.Lakshmi Narayanan for R2

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O R D E R

The present Civil Revision Petition has been filed to set aside the fair and decreetal order of the learned District Munsif, Katpadi dated 03.12.2019 in I.A.No.499 of 2018 in O.S.No.207 of 2011.

2. The brief facts of the case are as follows:-

The petitioner is the 2nd plaintiff and the 1st respondent is the 1st plaintiff and the 2nd respondent is the defendant in O.S.No.207 of 2011. The said suit was filed by the petitioner and the 1st respondent jointly to direct the respondent to deliver vacant possession of the suit property to them and to pay arrears of rent to the tune of Rs.48,000/- to them. Further, the written statement was also filed. In the meantime, the petitioner has preferred I.A.No.499 of 2018 to transpose the 1st respondent as 2nd defendant in the suit stating that the suit schedule property belonged to his father, namely, A.N.Sircar and he executed a Will in favour of the 1st respondent and another Will in favour of the petitioner. The 1st respondent filed O.P.No.94 of 2003 before this Court to probate the Will in his favour and the petitioner filed O.P.No.1 of 2004 to probate the Will executed by the



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father in favour of him and the O.P.No.1 of 2004 was transferred to this Court and both the cases were converted into T.O.S.No.23 of 2003 and a compromise was arrived and in view of the said joint compromise, a decree was passed in the said T.O.S.No.23 of 2003 by this Court, thereby the petitioner and the 1st respondent traced title to the suit property by way of compromise decree passed in the Letters of Administration granted in TOS No.23 of 2003.

(ii) Based on the orders passed in T.O.S.No.23 of 2003 the petitioner and the 1st respondent have filed the present suit against the 2nd respondent and another suit in O.S.No.133 of 2008 against one Vijayalakshmi and others and the said suit was dismissed. As against the same, an appeal has been preferred in A.S.No.504 of 2013 and the same is pending before this Court. The said Vijayalakshmi and another filed an Application No.2608 of 2012 in T.O.S.No.23 of 2003 before this Court to revoke the Letters of Administration granted based on compromise decree and the same was allowed and subsequently, the compromise decree was revoked. Aggrieved against the same, O.S.A., has been preferred before this Court and the same was dismissed with a direction to probate the Wills on merits. In the meantime, the petitioner has preferred I.A.No.499 of 2018 to



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transpose the 1st plaintiff as 2nd defendant. Resisting the same a counter was filed. The court below dismissed the said I.A., as against the same, the present Petition has been filed.

3. The learned counsel for the petitioner would submit that the trial court failed to note that the aforesaid subsequent events took place pending the suit and the present application has been filed after the disposal of O.S.A.No.92 of 2018. In the light of subsequent events, the petitioner and the 1st respondent cannot continue the suit as co-plaintiffs and the 1st plaintiff is to be transposed as the 2nd defendant to the suit, thereby pleaded to allow the present petition.

4. Per contra, the learned counsel for the 2nd respondent would submit that the I.A.No.499 of 2018 has been filed by the petitioner only to drag on the proceedings and in view of the fact that the suit was filed as early as in the year 2011 and both sides evidence were closed and arguments of both sides were heard and the suit was reserved for judgment. Meanwhile, the petitioner filed this petition and there is no provision to transpose the 1st plaintiff as 2nd defendant in the suit and the provision mentioned in the petition itself is wrong, thereby pleaded to dismiss



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the petition.

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5. Heard the learned counsel on either side and perused the documents placed on record.

6. On a perusal of the records, it is seen that suit in O.S.No.207 of 2011 was filed by the petitioner / 2nd plaintiff along with the 1st respondent / 1st plaintiff seeking a direction to deliver vacant space of the suit property by the 2nd respondent and to pay the arrears of rent to the tune of Rs.72,000/- to the plaintiffs. The 2nd respondent / defendant has filed the written statement on 07.09.2012 in the said suit and the trial court has framed the substantial questions of law for consideration. On the side of the plaintiffs, the petitioner / 2nd plaintiff, viz., Abraham Chandranath Sircar was examined as P.W.1 and he was cross examined in full on 31.03.2015 by the 2nd respondent / defendant. One Ulaganathan was examined as P.W.2 in chief and cross examined on 22.07.2015. On behalf of the 2nd respondent / defendant, Sasikumar was examined as D.W.1 in chief and on 25.02.2016, he was cross examined by the plaintiffs. Also, Bagyalakshmi was examined as D.W.2 in chief on 09.03.2016 and nearly after 9 months,



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she was cross examined by the plaintiffs, on 16.11.2016.

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7. It is also relevant to note that the case was pending for filing written arguments from 18.01.2017 and on 16.08.2018, nearly after 8 months, the arguments were concluded on the side of the plaintiffs, further, on 19.09.2018 defendant's side arguments were heard and the judgment date was fixed on 03.10.2018 at that point of time, the I.A No.499 of 2018 has been filed to transpose the 1st plaintiff as 2nd defendant.

8. It is not in dispute that the compromise decree passed in T.O.S.No.23 of 2003 was revoked by this Court in A.No.2608 of 2012. Further, as against the same, the 1st respondent / 1st plaintiff preferred an appeal in O.S.A.No.92 of 2018 before the Hon'ble Division Bench and after enquiry, the same was dismissed. .

9. It is important to note that the suit was filed in the year 2011 by the 1st respondent / 1st plaintiff along with the petitioner / 2nd plaintiff and the arguments on both sides as well as examination and cross examinations were concluded on 19.09.2018 and when the court below was about to pass



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a judgment on 03.10.2018, at that distance point of time, this petition, viz.,
I.A.No.499 of 2018, to transpose the 1st plaintiff as 2nd defendant, has been
filed and the same cannot be sustained in the eye of law.

In view of the above said facts and circumstances of the case, this
Court is of the view that the trial court has passed a well reasoned order,
which does not require any interference by this Court and therefore, the
present Civil Revision Petition is dismissed. Consequently, connected
miscellaneous petition is closed. No costs.

24.01.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

The District Munsif,

Katpadi

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V.BHAVANI SUBBAROYAN, J.,

ssd

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