



C.R.P. No. 412 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 412 of 2023
and
C.M.P. No. 3464 of 2023

1. M.Sathyamurthi
2. Muthusamy @ Muthu

... Petitioners

Vs

1. Duraisamy,
2. Chinnaiyan
3. Mayavan
4. Baskaran
5. Murugan
6. The District Collector,
Villupuram District,
now Kallakurichi Dt.
7. The Revenue Divisional Officer,
Kallakurichi.
8. The Tahsildar,
Kallakurichi Taluk,
now Chinnsalem Tk., Kallakurichi Dt.
9. Panjalai,
10. Latha,
11. Venkatesan

... Respondents



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PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 15.12.2022 passed in I.A.No. 1032 of 2022 in O.S.No. 127 of 2012 on the file of learned I Addl. District Munsif Court, Kallakurichi.

For Petitioners : Mr.N.Manoharan

ORDER

The Revision Petitioners herein are the defendants 12 and 13 in the suit and they have filed an application in I.A.No.1032 of 2022 before the trial court to reject the plaint under Order 7 Rule 11 of C.P.C. Originally, the suit in O.S.No. 127 of 2012 was filed on the file of I Addl. District Munsif, Kallakurichi by the plaintiffs for the relief of declaration and other consequential relief against defendnats 1 to 9.

2. The contention of 1st plaintiff is that his father and mother/defendants 1 and 2 executed two gift deeds in his favour on 26.02.2008 and based on that, 'A' and 'B' schedule properties were enjoyed



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by him. In fact, when the defendants 1 and 2 demanded a sum of Rs.2 lakhs from the plaintiffs and the same was refused, they have cancelled the gift deeds and executed another settlement deed in favour of his another brother/3rd defendant on 05.10.2009. Thereafter, the properties were also conveyed. Now, the present defendants have purchased the properties from 4th defendant and other defendants are also purchasers. However, during the pendency of the proceedings, these defendants/purchasers filed an application to reject the plaint on the ground that in the suit, the plaintiffs have made a specific pleading stating that Gift deeds executed by the defendants 1 and 2 in favour of plaintiffs are not valid for the reason that as per the pleadings in the plaint, they themselves admitted that they have given money and on receipt of the same, Gift deeds were executed in their favour. Therefore, the alleged deeds cannot be treated as valid under Sec.122 of Transfer of Property Act and as such, the suit filed based on both Gift deeds are not valid one. Furthermore, the plaintiffs are not seeking any relief with regard to cancellation of subsequent sale deeds. Hence, based on that ground, they want to reject the plaint.



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3. The said application was objected by the plaintiffs by filing counter objections and on hearing both sides, the learned Judge held that with regard to validity of purchase of property by these defendants can be decided only during trial, but not before issuing notice and also held that the reasons assigned for rejection of plaint, as such is not maintainable, because the issue involved between the parties are triable issue and based on that, the suit cannot be rejected. Accordingly, the said application was dismissed. Challenging the said findings, the defendants 12 and 13 have preferred this Civil Revision Petition.

4. The learned counsel for revision petitioners would submit that the trial judge failed to take note of the fact that in the plaint pleading itself, they have admitted that they have paid the amount, so it cannot be termed as Gift deeds. Apart from that, subsequent purchase made by the purchasers/defendants not declared as a valid document by a specific prayer and on that ground, the plaint has to be rejected. But, without considering the same, the trial judge erroneously dismissed the application. Hence, he prayed to set aside the same.



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WEB COPY 5. Heard and considered rival submissions made by learned counsel for petitioners as well as respondents and perused the records.

6. On bare perusal of documents viz., Gift deeds, it would show that gift deeds were executed by their parents in favour of plaintiffs in the year of 2008 and subsequently, in the year of 2009, the gift deeds were cancelled. Admittedly, no notice was served even before cancellation and after cancellation. However, in the plaint pleadings itself, they have stated that they have demanded a sum of Rs.2 lakhs, and when it was refused, the Gift deeds were cancelled by their parents. So, the pleadings in the suit would itself prima facie proves the conduct of defendants and subsequent sale of the properties. The learned counsel for petitioners would submit that parents of plaintiffs have every right to cancel the gift deeds, since because their survival is not taken care off after execution of gift deeds. But, those defence can be applicable only to the legal heirs of defendants 1 and 2 and not to these petitioners. If really, the plaintiffs have not asked for any relief with regard to the subsequent purchase made by the purchasers, the validity of



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the sale deed can be decided only at the time of trial. But, the fact remains that the plaintiffs asked for the relief of declaration, which may includes the relief with regard to the purchase of property. Therefore, the reasons assigned by the Revision Petitioners is not maintainable and not admissible in law. Furthermore, the reasons adduced by the trial court is justifiable one, which needs no interference. Accordingly, this Civil Revision Petition is dismissed. However, since the suit is pending from the year of 2012, the trial court is directed to complete the trial and dispose the suit as per manner known to law within a period of eight months from the date of receipt of the copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

06.03.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

I Addl. District Munsif,
Kallakurichi.

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T.V.THAMILSELVI, J.

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