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CRP.No.856 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRP.No.856 of 2023 and
CMP.No.6441 of 2023

Thirumuruga Ramalingam

... Petitioner

Vs.

- 1.S.Gandhimathi
- 2.Velavan
- 3.The Sub Registrar,
Sub Registrar Office,
Vadalur,
Kurinjipadi Taluk,
Cuddalore District
- 4.The District Registrar,
District Registrar Office,
Thiruppappuliyur,
Cuddalore,
Cuddalore District

... Respondents

PRAYER: Civil Revision petition is filed under Section 115 of CPC to allow the above civil revision petition by setting aside the fair and decretal order in IA.No.749 of 2022 in OS.No.237 of 2021 on the file of the Principal District Court, Cuddalore dated 27.02.2023.

For Petitioner : Mr.T.M.Ramalingam

For Respondents
For R1 : Mr.D.Ravichander



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ORDER

Challenging the impugned order passed in IA.No.749 of 2022 in OS.No.237 of 2021 on the file of the Principal District Court, Cuddalore dated 27.02.2023, the first defendant has preferred this revision.

2. Notice served and the counsel appeared for the first respondent.

3. Originally the suit in OS.No.237 of 2021 filed by the first respondent herein for the relief of partition claiming half share in the suit properties against his brother / the revision petitioner herein. In that suit, he appeared and filed written statement. When the matter was posted for trial at one occasion, the plaintiff was not able to appear on 07.12.2022. Hence, the suit was called and dismissed for default. Immediately, she filed application on 08.12.2022 next day to restore the suit. In that application in IA.No.749 of 2022, the first defendant raised his objection, however contended that he claimed to settled the issue by offering Rs.40,00,000/- equal to that of half share of the plaintiff. But the trial judge heard the said application and passed order to restore the suit by imposing cost of Rs.500/-. Now the suit is posted for cross of PW1. The grievance of the petitioner is that he already suggested



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for settling the issue by offering equal amount to that of share belongs to the plaintiff. Without considering such suggestion, the trial judge proceeded with the matter, as such it is totally unfair. Hence, he prayed to set aside the findings in IA.No.749 of 2022.

4. The learned counsel appearing for the plaintiff / the first respondent herein argues that immediately after dismissal of the suit, the first defendant sold the property to third parties on 12.01.2023 and 27.01.2023. Hence, on seeing the conduct of the first defendant, necessity arose for the plaintiff to file another suit in OS.No.18 of 2023 on the file of the District Munsif Cum Judicial Magistrate, Kurinjipadi challenging the transfer made by the said defendant during the pendency of the proceedings.

5. So fact reveals that immediately after dismissal of the said suit, some of the properties were sold by the first defendant. So between the parties, now two suits are pending. In the subsequent suit, the plaintiff herein claimed relief of permanent injunction not to alter the physical features of the property with other consequential relief. But the learned counsel for the revision petitioner submits that still he is intended to settle the issue since she is the sister.



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6. Per contra, the learned counsel for the first respondent pointed out the conduct of the revision petitioner stating that immediately within two weeks from the date of the dismissal of the suit, he sold the property which shows that he wanted to drag the proceedings. Hence, he raised objection.

7. Admittedly both are brother and sister and the suit was filed by the sister for partition claiming half share in the property. The age of the plaintiff Gandhimathi is 62 years and the first defendant/revision petitioner's age is about 59 years. If at all any possibility of settling the issue, it will minimise the litigations between the parties during their later age. Considering that, mediation is suggested for both parties.

8. Accordingly, both the parties are directed to appear before the Mediation Centre, Cuddalore for two sittings and the mediation shall be concluded within three weeks from the date of this order . If the matter is not settled, the Mediation Centre, Cuddalore is directed to remand back the matter to the trial court within a period of one week from the date of failure of the mediation. Thereafter, the trial Judge is directed to proceed with the case as per the manner known to law.



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Considering that the subsequent suit filed by the plaintiff / the first respondent herein is pertaining to the suit properties in OS.No.237 of 2021 and part of the cause of action also subject to the earlier suit, therefore OS.No.18 of 2023 on the file of the District Munsif Cum Judicial Magistrate, Kurinjipadi is withdrawn and transferred to the file of the learned Principal District Court, Cuddalore. The learned District Munsif cum Judicial Magistrate, Kurinjipadi is directed to send the entire bundle in OS.No.18 of 2023 to the file of the learned Principal District Judge, Cuddalore forthwith and the learned Principal District Court, Cuddalore is directed to try the suit in OS.No.237 of 2021 along with OS.No.18 of 2023. The defendants in the suit in OS.No.18 of 2023 are directed to file written statement within a period of four weeks from the date of commencement of joint trial. Liberty is also given to the defendants to file their additional written statement in both the suits.

10. In the result, this civil revision petition stands disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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T.V.THAMILSELVI, J.

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To
1.The Principal District Court,
Cuddalore
2.The District Munsif cum Judicial Magistrate,
Kurinjipadi
3.Mediation Centre,



Cuddalore

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