



CRP.No.457 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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and CMP.No.2350 of 2016

Akilandeswari

... Petitioner

Vs.

1.Nallatchi Gounder @ Natesan
2.Thiruvanandammal
3.Gnanavel
4.Saravanan
5.Ammami @ Nallammal
6.Dhanapal
7.Kaviraj

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India praying to set aside the order and decretal order in IA.No.737 of 2015 in OS.No.563 of 2007 on the file of the District Munsif Court, Namakkal dated 27.10.2015.

For Petitioner : M/s.S.Uma Maheswari

For Respondents : No appearance

ORDER

This civil revision petition has been filed to set aside the order and decretal order in IA.No.737 of 2015 in OS.No.563 of 2007 on the file of the



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District Munsif Court, Namakkal dated 27.10.2015, thereby allowing the petition to send for a document for comparison of left thumb impression of the third defendant.

2. The petitioner is the fourth defendant in the suit filed by the respondents 1 to 4 herein for partition and separate possession in respect of the suit property. The suit property was purchased by the grandfather of the petitioner by the registered sale deed dated 19.03.1965. Therefore, it is a self acquired property of his grandfather and he had been in possession and enjoyment of the suit property. He died on 02.03.2008. During his life time, he had executed a registered settlement deed dated 11.06.2007 in favour of the petitioner herein. In the suit, the first respondent herein examined himself as PW1 and produced the alleged agreement for sale dated 26.08.2004 said to have been executed by the sixth respondent herein / third defendant. A xerox copy of the said document was marked as Ex.A3. The case of the respondents 1 to 4 herein is that the sixth respondent agreed to convey his share in the suit property. However, the sixth respondent herein denied the very execution of the agreement for sale itself. Therefore, the respondents 1 to 4 herein filed application seeking expert opinion by comparing the signature contained in the said sale agreement by affixing the thumb impression.

3. The respondents 1 to 4 filed suit for partition. In the suit for



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partition whatever the sale agreement executed by the sixth respondent dated 26.08.2004 thereby agreed to sell his share is nothing to do with the issues involved in the main suit. The main issue involved in the suit is that whether the suit property is a self acquired property of the grand father of the petitioner herein or it is ancestral one in order to decide the suit for partition. Further, even during the life time of his grandfather, he executed settlement deed in favour of the petitioner by the registered settlement deed dated 11.06.2007. Therefore, the agreement dated 26.08.2004 is nothing to do with the issues involved in the present suit. Therefore, there is absolutely no necessity for comparison of thumb impression contained in the agreement for sale since the burden of proof is on the respondents 1 to 4 herein to prove that the properties are the ancestral joint properties of the grandfather of the petitioner herein.

4. Without considering the above, the trial court mechanically allowed the application in the interest of justice. That apart, the above said application was filed only to drag on the suit and nothing else. Therefore, this Court finds infirmity in the order passed by the court below and the same is liable to be set aside.

5. Accordingly, the order and decretal order in IA.No.737 of 2015 in OS.No.563 of 2007 on the file of the District Munsif Court, Namakkal dated



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27.10.2015 is set aside and this civil revision petition is allowed. The trial court is directed to dispose of the main suit within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.02.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
lok



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G.K.ILANTHIRAIYAN, J.

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To



The District Munsif Court,
Namakkal

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