



C.R.P. No. 2424 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 2424 of 2023

and

C.M.P.No.15164 of 2023

N. Balakrishnan

...Petitioner

.Vs.

1. A.A. Arughathoss

2. K. Sakunthala

3. K. Vasu

4. K. Rosaiya

5. K. Yesu

6. Kanchana

7. Ranjithkumar

8.Sathishkumar

...Respondents

1/7



C.R.P. No. 2424 of 2023

WEB COPY

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the docket order dated 08.02.2023 passed by the learned III Additional District and Sessions Judge, poonamallee in I.A.S.R.No.277 of 2023 in O.S.No.83 of 2012 and consequently number the Interim Application by taking on record and pass orders.

For Petitioner : Mr. Arun C. Mohan

ORDER

This petition is filed to set aside the docket order dated 08.02.2023 passed by the learned III Additional District and Sessions Judge, poonamallee in I.A.S.R.No.277 of 2023 in O.S.No.83 of 2012.

2.The facts of the case is that that the petitioner and the respondent are well known to each other. The first respondent herein has borrowed money from the petitioner for purchasing a property and promised that he will allot 80 % of the suit property to him and he will retain the



remaining 20% of the suit property. It is pertinent to note that the suit property was purchased in a court auction and there are more than 70 to 80 persons who were encroaching upon the suit scheduled property. However, the first respondent and the encroachers entered into a joint compromise memo with regard to evicting the subject property. Thereafter, it was to the shock and surprise to the petitioner that the first respondent failed to abide by the terms of the oral agreement and he has not conveyed 80% share in the suit property and filed a suit viz., O.S.No.83 of 2012 on the file of the learned III Additional District Judge, Pooamallee against the other respondents herein. While so, the 2nd to 9th respondents herein also filed an application viz I.A.No.42 of 2013 in the suit seeking to reject the plaint filed by the first respondent herein and the same was dismissed vide order dated 28.02.2014.

3. Aggrieved over the said order the 2nd to 9th respondents preferred a Civil revision petition before this Court in C.R.P.No. 4144 of 2014 and the same was disposed vide order dated 29.03.2021 recording the joint compromise memo referred above, whereas the fact remains that the



first respondent and other respondents herein entered into a criminal conspiracy with an intention to grab the suit property and executed the said joint memo of compromise. Hence, the petitioner filed an I.A. No.17 of 2015 to implead himself as a party in the suit and the same was allowed vide order dated 17.11.2015. Thereafter, without serving any notice to the petitioner, the respondent has filed an application to amend the cause tile and the same was also allowed in I.A.No. 2 of 2016.

4. The first respondent had also taken suit summons to the petitioner through private notice in the month of March 2016 and not served any notice to the petitioner and falsely represented before the Trial Court that private notice by registered post was served on the petitioner. It is unfortunate when the petitioner went to abroad the first respondent obtained the Ex-parte order in the above suit on 26.04.2016. To set aside the ex-parte order the petitioner filed an application in I.A.No.8 of 2022 and the said application was allowed. The grievance of the petitioner is that when the I.A. No.8 of 2022 was pending the respondents in collusion with each other obtained a partial decree dated 21.12.2022 before the learned Trial Court



C.R.P. No. 2424 of 2023

based on the alleged joint compromise memo. Challenging the partial decree dated 21.12.2022, the petitioner filed an interim application viz., Sr.No.277 of 2023 on 08.02.2023 to set aside the partial decree and the same was returned by the Trial Court stating that the impugned Application is not maintainable under Order IX Rule 13 of Civil Procedure Code, 1908 and the petitioner does not have the locus standi to file the Impugned application when no ex-parte decree was passed against the petitioner and how the petitioner can challenge the order dated 21.12.2022. To number the interim application viz., Sr.No.277 of 2023 on 08.02.2023 the petitioner has come up with this petition.

5. The learned counsel for the petitioner submitted that the learned Judge failed ought to have to taken into consideration the impugned I.A on record and decide whether the same is liable to be allowed or not and without doing so rejecting the application is unlawful. He further submitted that the petitioner has denied the opportunity to prove his case in the suit which is against the principles of natural justice.



C.R.P. No. 2424 of 2023

6. On a perusal of records it is seen that the petitioner has not challenged the rejection of I.A before the Court below.

7. In view of the above, the petitioner is directed to challenge the rejection of I.A before the Court below and the learned Judge is directed to either number the I.A or post the matter under the caption “Maintainability” and pass orders within a period of one month from the date of receipt of a copy of this order.

8. With the above directions, this Civil Revision Petition is disposed of. No order as to costs. Consequently, the connected miscellaneous petition is closed.

13.07.2023

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Index : Yes/No

Internet: Yes/No

To.

1. The III Additional District and Sessions Judge, poonamallee



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C.R.P. No. 2424 of 2023

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Smn

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