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C.R.P(PD)No.2067 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P(PD)No.2067 of 2020
and C.M.P.No.13000 of 2020

Jayalakshmi

...Petitioner

vs.

1.Adhilakshmi
2.Ganesan
3.Sulochana
4.Gajalakshmi
5.Gopalakrishnan
6.Dhanalakshmi
7.Baghyalakshmi
8.Muralidharan
9.Dananjezhian

...Respondents

*(Respondents 1 to 6 are given up
as they were set exparte)*

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and the decretal order dated 20.12.2019 in I.A.No.662 of 2019 in O.S.No.323 of 2014 passed by the Principal District Munsif's Court, Villupuram.

For Petitioner : Ms.R.Meenal

For Respondents : R1 to R6 – given up
Mr.V.S.Sivasundaram for R7 to R9



C.R.P(PD)No.2067 of 2020

ORDER

This petition has been filed to set the fair and the decretal order dated 20.12.2019 in I.A.No.662 of 2019 in O.S.No.323 of 2014 passed by the Principal District Munsif's Court, Villupuram.

2.The brief fact of the case is that the properties described belonged to the petitioner's father Subbarayal Naidu, the said Subbarayal Naidu had three sons viz., Azwar, Kannan, Ganesan and a daughter Jayalakshmi. The said Subbarayal had looked after the family as Kartha of the joint family. The said Subbarayal Naidu had been in possession and enjoyment of the properties and performed the marriage of his sons and daughter. The plaintiff states that her brother Kannan had died intestate on 15.4.1990 and left behind him the defendants 7 to 9 viz., his wife Bagiyalakshmi and his sons Muralidharan and Dhanancheziyan as his legal heirs. Originally the suit was filed by the petitioner in O.S.No.323 of 2014 before the Principal District Munsif, Villupuram. The petitioner has filed an Interlocutory Application in I.A.No.662 of 2019. By order dated 20.12.2019, learned Principal District Munsif, Villupuram had dismissed the application filed by the petitioner. Aggrieved by the same, the present Civil Revision Petition has been filed.



C.R.P(PD)No.2067 of 2020

3.Learned counsel for the petitioner submitted that the trial Court ought to have allowed the application for amendment as it would not prejudice the respondents in any way. He submitted that the trial Court erred in passing a non-speaking order and the trial Court ought to have noted that no grievance would be caused to the contesting respondents if some properties are deleted from the schedule of properties at the instance of the plaintiff. He further submitted that the trial Court failed to note that most of the sharers have been set exparte and that is should be presumed that they have no objection to the suit being decreed and the trial Court ought to have seen that the suit filed by the petitioner's son for getting his title declared for the items was pending and that the seventh respondent herein is also a party to that suit.

4.He also submitted that the trial Court ought to have noted that whether the petitioner succeeded or failed in the present suit, the rights of the seventh respondent would not be affected if two items are deleted in the suit schedule. He further submitted that the trial Court did not properly appreciate the matter in issue and the trial Court ought to have seen that the petitioner is not attempting to alter the substance of the case. Hence, he prayed this Court to allow the Civil Revision Petition.



C.R.P(PD)No.2067 of 2020

5.Learned counsel for the seventh respondent has filed a counter in

I.A.No.662 of 2019 and the same has been adopted by the respondents 8 and 9 in I.A.No.662 of 2019, wherein it has been stated that it is true that the seventh respondent had filed a written statement contending that the plaintiff's son Mathan Kumar had filed a suit in O.S.No.163 of 2010 on the file of the Principal District Munsif, Villupuram in respect of the wet S.No.77/2 – Ac.0.51 cents and dry S.No.22/6 – Ac.0.45 cents out of Ac.0.90 cents on the basis of settlement deed dated 07.06.1990 executed by her father Subburayalu Naidu for cancellation of Partition Deed dated 17.04.2008 and for recovery of possession of the said property.

6.It was stated in the counter that the seventh defendant specifically denies the allegation that the plaintiff's son Mathan Kumar is the absolute owner of the suit properties in O.S.No.163 of 2010 on the file of the Principal District Munsif, Villupuram. In fact, the Settlement Deed is void and the said Mathan Kumar was not in possession and enjoyment of the property at any point of time. It was further stated that the plaintiff arrived as fifth defendant in that suit and she had filed a written statement on 16.09.2010 and thus she had the knowledge about the said Partition Deed 17.04.2008 even as early as on 16.09.2010. But it



C.R.P(PD)No.2067 of 2020

is false to say that she had filed to inform about that suit due to inadvertence and the two items were included in this suit as items 12 and 20 mistakenly. Hence, the said amendment petition is not at all maintainable.

7.Heard learned counsel for the petitioner, learned counsel appearing for the respondents 7 to 9, and the respondents 1 and 6 were set as exparte in the trial Court and perused the material available on record.

8.On perusal of records, it is seen that the cause of action for the suit has arisen on 15.09.2014 when the plaintiff came to know about the fraud played by Azwar and the second defendant Ganesan and the Partition Deed dated 17.04.2008 was concocted and created by them on 07.10.2014 when the plaintiff had issued a notice through her advocate to the defendants 2, 3 and 7 and on 17.11.2014 when the plaintiff's advocate had received the reply notice dated 10.11.2014 was sent by the seventh defendant's advocate had received the reply notice dated 10.11.2014 was sent by the seventh defendant's advocate in Gengarampalayam Village, Villupuram Taluk.



C.R.P(PD)No.2067 of 2020

9. On going through the averments, it seems that originally on 07.06.1990 a Settlement Deed was executed by the grandfather in favour of minor viz., Mathan Kumar. The plaintiff's son Mathan Kumar had filed a suit in O.S.No.163 of 2010 on the file of the Principal District Munsif, Villupuram in respect of wet S.No.77/2 Ac.0.51 cents and dry S.No.22/6 Ac.0.45 cents out of Ac.0.90 cents on the basis of Settlement Deed dated 07.06.1990 executed by her father Subburayalu Naidu. The plaintiff submits that the suit properties in O.S.No.163 of 2010 on the file of the Principal District Munsif Court, Villupuram are include in this suit as items 12 and 20 mistakenly and the said properties are not liable by partition since her son Mathan Kumar is absolute owner of the suit properties wet survey No.77/2 0.50 cents and dry survey No.22/6 Ac. 0.45 out of 0.90 cents and the said items were deleted in this suit O.S.No.323 of 2014. The petitioner has filed an Interlocutory Application in I.A.No.662 of 2019. By order dated 20.12.2019, learned Principal District Munsif, Villupuram had dismissed the application filed by the petitioner.

10. Since both the parties are from the same family and the issue in two suits are also one and the same, this Court is of the view that a



C.R.P(PD)No.2067 of 2020

direction may be given to the trial Court to complete and dispose of the two suits simultaneously. Accordingly, the trial Court is directed to complete and dispose of both the suits as expeditiously as possible. Both the parties are directed not to take unnecessary adjournments. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

11. With the aforesaid directions, this Civil Revision Petition is disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

31.01.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
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To

The Principal District Munsif Court, Villupuram.



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C.R.P(PD)No.2067 of 2020

V.BHAVANI SUBBAROYAN, J.

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C.R.P(PD)No.2067 of 2020

31.01.2023