



C.R.P.No.2272 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2272 of 2019

and

CMP.No.14802 of 2019

S.Keerthana

.. Petitioner

Vs.

1.Lakshmi

2.Balamaheswari

3.Anusuya

4.Vijayapriyadharshini

5.Negavardhini

6.K.Arthanari

7.V.M.Vajravel (Died)

.. Respondents



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order, dated 13.11.2018 in E.A.No.385 of 2018 in E.A.No.101 of 2011 in E.P.No.267 of 2003 in O.S.No.442 of 2000 on the file of I Additional Subordinate Judge, Erode.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondents : Mr.M.Palani for R1 to R5

: Not Ready in Notice for R6

ORDER

One Mr.K.Arthanari filed a suit in O.S.No.442 of 2000 against one Mr.V.M.Vajravel. The suit was for recovery of money and that suit was decreed. To execute the said decree, he filed E.P.No.267 of 2003. In the said execution petition, the Judgment debtor's granddaughter one Ms.S.Keerthana filed E.A.No.101 of 2011, claiming that she has 1/6th share in the property. While this was the case, an other litigation came to be launched. This was at the instance of one Mr.R.Kandasamy.



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2. The said Mr.R.Kandasamy had entered into a registered sale agreement, dated 31.05.1999 with the Judgment debtor Mr.V.M.Vajravel and his son Mr.Sathiskumar. In the said agreement, Mr.Sathiskumar had stated that he is also representing the interest of his daughter Ms.S.Keerthana.

3. As the agreement was not honoured, a suit for specific performance of the agreement of sale was filed in O.S.No.25 of 2004 on the file of the I Additional District Judge at Erode. The said suit was decreed on 17.01.2005. On the basis of the decree, Mr.R.Kandasamy got a sale deed executed in his favour on 06.07.2017. This was in E.P.No.19 of 2005 in O.S.No.25 of 2004.

4. On the strength of this decree and subsequent execution proceedings initiated by him, Mr.R.Kandasamy launched a claim petition in E.A.No.151 of 2008. The said Mr.R.Kandasamy died, pending the litigation.



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5. Taking note of the fact that the Civil Revision Petitioner has filed E.A.No.101 of 2011, the legal heirs of Mr.R.Kandasamy filed an application to implead themselves in E.A.No.385 of 2018 and that came to be allowed against which the present Civil Revision Petition.

6. The scope of E.A.No.101 of 2011 is to be decided as per the provisions of Order 21 Rule 58 of Code of Civil Procedure. In such an application, the Court tests the claim that has been preferred and whether the claimant has any right, title or interest to the suit property. In this proceeding, impleading of third party is absolutely unnecessary. The Court if it adjudicates that Ms.S.Keerthana has a share, then it is entitled to pass the order accordingly. If the Court comes to the conclusion that Ms.S.Keerthana does not have a share, her claim petition will stand dismissed.

7. Mr.M.Palani, learned counsel appearing for Respondents 1 to 5 urge that the claim petition is filed with respect to their property purchased under a decree of Court and therefore, they should be permitted to join the claim petition. He argues in case, they are not



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impleaded in the said proceeding, it will cause serious prejudice.

8. As noticed above, the predecessor in title of respondents 1 to 5, namely, Mr.R.Kandasamy had already initiated E.A.No.151 of 2008 in the said execution petition. The appropriate remedy for the respondents 1 to 5 is to come on record in the said execution application and bring to the notice of the Court the records that they have in their possession including the filing of a suit for partition by Ms.S.Keerthana in O.S.No.203 of 2006 on the file of the I Additional District Judge at Erode and the dismissal thereof on 28.02.2017. In Ms.S.Keerthana's claim petition, they are neither proper nor necessary parties. For the sake of orderly disposal, the learned I Additional Subordinate Judge, Erode is requested to try E.A.No.101 of 2011 along with the pending E.A.No.151 of 2008 and dispose of the same within the period of six (6) months from the date of receipt of a copy of this Order.

9. By the impugned Order, the executing Court has expanded the scope of the litigation. Hence, the order passed in E.A.No.385 of 2018 in E.A.No.101 of 2011 in E.P.No.267 of 2003 in O.S.No.442 of 2000, dated



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13.11.2018 is set aside.

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10. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.09.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
MKN2/VEDA

To
The I Additional Subordinate Judge, Erode.

V.LAKSHMINARAYANAN,J.



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