



CRP PD Nos.2878 and 2881 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11. 2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition (PD) Nos. No.2878 and 2881 of 2023
and
C.M.P. No.17835 of 2023

Muthusamy (died)

1.Sundarammal
2.Arjunan
3.Ramasamy
4. Maheswari

.. Petitioners

Versus

Venkittammal (died)

1.Palanisamy
2.Subramaniam
3.Ganesan
4.Thangavel
5.Kamalam

.. Respondents

Civil Revision Petitions are filed under Article 227 of the Constitution of India against the Fair and Final Order dated 23.02.2023 made in I.A. Nos. 899 and 898 of 2013 in O.S. No. 108 of 2003 on the file of the Principal District Munsif Court, Palladam, Tiruppur District.

For Petitioners : Mr. P.M. Duraiswamy

For Respondents :Mr. S. Lakshmanasamy [R1, R4 and R5]



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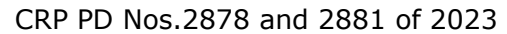
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: Mr. N. Manoj Kumar [R2 and R3]

COMMON ORDER

Challenging the impugned order passed in I.A. Nos. 899 and 898 of 2013 in O.S. No.108 of 2003 on the file of the Principal District Munsif Court, Palladam, Tiruppur District, the revision petitioner has preferred these revision petitions.

2. The suit in O.S. No. 108 of 2003 was filed by Muthusamy (died), as sole plaintiff. The defendants 2 to 6 in the suit are the brothers and sister of the sole plaintiff. In other words, the Plaintiff and the defendants 2 to 6 are children born to the first defendant Venkittammal (died) and Late. Sankarappa Gounder. It is the case of the plaintiff that his father Sankarappa Gounder was the owner of lands measuring a total extent of 9 acres and 28 cents out of which his father had executed a registered settlement deed dated 09.04.1992 in favour of one of his sons namely Thangavel, fifth defendant. The remaining 6.28 acres of land was in possession and enjoyment of his father Sankarappa Gounder till his life time. According to the plaintiff, his father, due to old age, was desirous of settling the remaining lands measuring 6.28 acres equally to all his children. While so, his father fell down and suffered injuries in his hand. Taking advantage of this situation, the defendants 3 and 4 prepared a



Believing their words, the father of the plaintiff went to the office of the Sub-Registrar, Palladam and executed the settlement deed. Later, when he came to know about the folly, he has given a complaint on 26.02.2003 to the police and also to the Sub-Registrar with a request not to return the settlement deed to the defendants 3 to 4. Above all, the father of the plaintiff also caused a notice dated 04.03.2003 to the defendants 3 and 4 expressing his intention to cancel the registered settlement deed. However, on 10.03.2003, his father Sankarappa Gounder died and after his death, a reply notice dated 23.06.2003 was sent by the defendants 3 and 4 repudiating the averments in the notice. In those circumstances, the sole plaintiff has filed the suit for a declaration to declare that the settlement deed dated 22.02.2003 is null and void and for a direction to divide the suit property into 7 equal shares.

3. The defendants have contested the suit by filing a written statement and repudiated the plaint averments.

4. During trial in the suit, on behalf of the plaintiff, the advocate notice dated 04.03.2003 sent to the defendants was marked as Ex.P10 and the



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complaint dated 06.03.2003 sent by Sankarappa Gounder to the Tahsildar was marked as Ex.P14. While so, pending suit, the sole plaintiff died and therefore, his legal heirs were brought on record as plaintiffs 2 to 5.

5. When the suit was taken up for trial, the plaintiffs 2 to 5 have taken out the instant application to reopen the case so as to enable the Advocate, who has caused the notice under Ex.P10, to be examined as a witness in this case. These applications were dismissed by the trial court and therefore, the present Civil Revision Petitions have been filed.

6. The learned counsel for the petitioners submits that admittedly, the deceased Sankarappa Gounder has caused a notice under Ex.P10 to the defendants 3 and 4 for which a reply was also sent by them. However, the defendants in their written statement have disputed it and therefore, it is just and necessary for the petitioners to examine the Advocate Mr. Raveendran as a witness in the present case. If such an opportunity is refused, the petitioners will be highly prejudiced.

7. On the other hand, the learned counsel for the respondents-defendants submit that the notices were sent in the year 2003 and after a decade, the present application has been taken out by the plaintiffs and it is clearly an



after-thought. It is also stated that the present application has been filed only to protract the proceedings, which was rightly taken note of by the court below to dismiss the applications. The learned counsel therefore prayed for dismissal of the Civil Revision petitions.

8. Heard both sides.

9. The suit was filed for declaration to declare the settlement deed dated 22.02.2003 as null and void, not binding on the plaintiff and for consequential relief of partition of the plaint described property. Even during the life time of Sankarappa Gounder, the notice under Ex.P10 was issued by him through his advocate Mr. Raveendran. However, in para No.21, it was stated that no notice for partition was issued before filing of the suit. It is also stated in the written statement that the settlement deed dated 22.02.2003 has been validly executed by Sankarappa Gounder and therefore the suit is not maintainable. In the light of the above averments, the plaintiffs have taken out the instant applications to examine Mr. Raveendran, Advocate, who issued the notice under Ex.P10 at the instruction of Mr. Sankarappa Gounder. Though the instant applications have been filed at the time after the evidence on both sides was closed, the fact remains that the instant applications have been filed in the year 2013 and they were dismissed by the trial court on 23.02.2023.



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Immediately thereafter, the instant Civil revision petitions have been filed by the petitioners. The fact remains that the defendants asserting an exclusive right on the basis of the settlement deed, on the other hand, it is the claim of the plaintiffs that the defendants 3 and 4, by misrepresentation, made the deceased Sankarappa Gounder to execute the settlement deed in their favour. In the light of the above factual background, it is just and essential to permit the petitioners to examine Mr. Raveendran, Advocate, who issued the notice under Ex.P10. Such a valuable right to examine the advocate, if denied, would defeat the claim of the plaintiffs to seek for a declaratory decree. In such event, it will always be open to the defendants to subject the witness to cross-examine to disprove the contentions of the plaintiffs.

10. In the light of the above, the Order dated 23.02.2023 made in I.A. Nos. 899 and 898 of 2013 in O.S. No. 108 of 2003 on the file of the Principal District Munsif Court, Palladam, Tiruppur District is set aside. The trial court is directed to issue summons for appearance of the witness Mr. Raveendran, Advocate and also to permit the defendants to cross-examine the witness. After recording such evidence, the trial court is directed to complete the trial within a period of three months. Both side parties are directed to co-operate with the trial. The Civil Revision Petitions are disposed of accordingly. No



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costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes / No
Internet : Yes / No
ssn

To

The Principal District Munsif Court,
Palladam,
Tiruppur District.



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T.V.THAMILSELVI, J.,

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