



C.R.P.(NPD).No.2469 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE **MR.JUSTICE N.SESHASAYEE**

C.R.P.(NPD).No.2469 of 2019
and C.M.P.No.16141 of 2019

R.Palanisamy

... Petitioner

Vs.

1.Lakshmiammal
2.Radhakrishnan
3.Karthikeyan
4.Easwari

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, seeking to set aside the fair and decretal order, dated 14.03.2018 passed in REP.No.83 of 2009 in O.S.No.182 of 2001 on the file of the Sub Court, Tirupattur, Vellore District.

For Petitioner : Mr.P.A.Sudesh Kumar

For Respondents : M/s.T.R.Rajaraman
D.Chitra Maragatham



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ORDER

The revision petitioner before this Court is with this revision essentially because he has invoked a wrong provision of Civil Procedure Code.

2.A certain property measuring 3,667 sq.ft plus building was originally purchased by one Chinnaia Chettiar vide sale deed dated 31.01.1958. On 16.01.1976, the said Chinnaia Chettiar is stated to have executed a registered Will bequeathing the aforesaid property to his mother and then passed away few days later on 25.01.1976. The Will in favour of Chinnaia Chettiar's mother came into effect and on 05.07.1989, she sold the entire property plus a building therein under three sale deeds to two persons namely Chakrapani and Kamala. On 08.11.2000, the purchasers under these three sale deeds sold the property to one Rathina Mudali, his wife Punithavathi and his three sons Manickam, Palanisamy and Silamban.

3.While things stood thus, on 20.08.2001, the widow of the said Chinnaia Chettiar with her children instituted O.S.No.181 of 2001 for declaration of their title and recovery of possession and the suit was laid against Chakrapani, Kamala (who had lost their title by their sale to Rathina Mudali



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and others as on the date of the suit) and Rathina Mudali, the first of the five joint purchasers under the sale deeds. None of the defendants chose to contest the suit. As a consequence, an exparte decree came to be passed by the trial Court on 12.04.2004.

4. On 12.03.2009, the plaintiffs laid E.P.No.83 of 2009 for recovery of possession. During the pendency of the Execution Petition, Rathina Mudali passed away and his heirs were brought on record. To make it clear, one such legal representative is the present revision petitioner. On appearance, the revision petitioner herein filed E.A.No.58 of 2013 under Order 21 Rule 58 C.P.C. That was dismissed by the execution Court essentially on the ground that in a E.P for delivery of property, an application under Order 21 Rule 58 C.P.C cannot be maintained. This is now under challenge.

5. Learned counsel for the revision petitioner submitted that what the execution Court overlooked to see was that the revision petitioner had acquired 1/5 share in his own strength and that was not defended at all. In fitness of things, the decree holders / plaintiffs ought to have impleaded not only Rathina Mudali but also all those who have jointly purchased the



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property in question vide sale deeds dated 08.11.2000 from Chakrapani and Kamala. He added that by rejecting the revision petitioner's application, he was denied an opportunity to establish that even the suit cannot be maintained.

6.Per contra, the learned counsel for the respondents defended the order of the execution Court and contended that an application under Order 21 Rule 58 C.P.C can be maintained only when a decree is passed for money and at a time when the judgment debtor's property was attached, and not when the execution Court is in the process of executing a decree for delivery of property. Some more submissions are also made by the learned counsel on the merit of the case.

7.Broadly, this Court finds that Palanisamy, the revision petitioner herein ought to have been in the party array in the suit. Whether his father's presence in the party array is adequate or not could not be ascertained, for that requires some evidence, but the decree itself was passed exparte. The second part is whether doctrine of substantial representation can be extended to situation such as this. This also needs to be considered. What is



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in risk is the right of the revision petitioner which now stands exposed due to the default of the plaintiffs to implead him despite the fact they know about the sale deeds dated 08.11.2000, but for which, they need not have even impleaded Rathina Mudali in the suit.

8.The solution is not difficult to reach. This Court now converts REA.No.58 of 2013 filed by the revision petitioner as one filed under Order 21 Rule 97 C.P.C and remands the matter back to the execution Court for *de novo* consideration of the application by applying the parameters provided therefor under the Civil Procedure Code. The said exercise shall be completed on or before 30.06.2023.

9.This Civil Revision Petition stands disposed of accordingly. No Costs. Consequently, the connected miscellaneous petition is closed.

20.03.2023

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Index : yes / no
Internet : yes / no
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N.SESHASAYEE

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