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C.R.P. (PD) No. 2803 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HON'BLE Mr. JUSTICE V. LAKSHMINARAYANAN

C.R.P. (PD) No. 2803 of 2017

and

C.M.P. No. 13273 of 2017

1. Valliammal
2. Ambujam
3. Natarajan
Petitioners

...

Vs.

Sri Kumar

... Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India praying to struck off the suit in O.S. No. 85 of 2017, on the file of the District Munsif Court, Thiruvottriyur, Chennai.

For Petitioners : Mr. M.L.Ramesh

For Respondents : Not ready notice

ORDER

The point which has been agitated in this revision is that the document bearing No. 2198 of 2017 is not a sale deed, but it is only a mortgage deed. Hence, a suit filed holding it as a sale deed has to be struck



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off in exercise of the powers conferred on this court under Article 227 of the Constitution of India.

2. Mr. M.L.Ramesh, learned counsel appearing for the petitioners/defendant nos. 1 to 3, would point out that there is discrepancy in the copy of the document issued by the Sub-Registrar at Purasawalkam when applied by the plaintiff and when the defendant obtained the copy of the very same document. He would state that the certified copy filed by the plaintiff shows that it is a sale deed, whereas the certified copy filed by the defendant shows that it is a mortgage deed. On that score, he would state that the plaintiff, who claims to have purchased the property from the defendants, is not entitled to stake title to the property. Hence, the suit should be struck off.

1. He would further state that fraud has been played on the court and therefore, even on that ground, I have to invoke Article 227 of the Constitution of India and strike off the suit.

2.



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4. Whether a document is a sale deed or a mortgage deed requires evidence. In other words, it is a mixed question of law and fact. It is not a case, where the document dated 22.07.1982 in document No. 1332 of 1982 has already been found not to be a sale deed but a mortgage deed. In case of a mixed question of law and fact, the scope of the power under Article 227 of the Constitution is limited. Therefore, I am not inclined to interfere with the taking on file of the suit in O.S. No. 85 of 2017.

5. Suffice it to direct the learned trial Judge to take up the suit and dispose of the same on or before 28.02.2024. On such disposal, the learned trial Judge is directed to submit a report to this Court.

6. With the above directions, this civil revision petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

04.07.2023

Maya

NCS : Yes/No

Index : Yes/No



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V.LAKSHMINARANAN, J.

Maya

To

The Judge
District Munsif Court
Thiruvottriyur.

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