



C.R.P.No.4033 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4033 of 2023

Kokilavani

... Petitioner

-Vs-

1.S.Dhanachezhiyan
2.S.Rajkumar
3.S.Sivakumar
4.R.Sumathi
5.R.Aadilakshmi
6.R.Durga
7.R.Vijayakumar
8.M.Selvarani
9.Magalakshmi
10.Santhi
11.Marimuthu
12.Ellammal

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the impugned order dated 18.03.2020 passed in SR.No.3936 of 2017 in OS No.NIL of 2017 on the file of Subordinate Judge, Vaniyambadi, Vellore District.

For Petitioner

: Mr.L.K.Manjunath



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C.R.P.No.4033 of 2023

ORDER

Challenging the impugned order passed in an unnumbered plaint in O.S.SR.No. 3936 of 2017, passed by the learned Sub-Judge, Vaniyambadi, Vellore District, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner filed a suit seeking for the relief of partition, since because as per the undertaking dated 10.10.1985, the defendants are bound to execute the settlement deed, but they failed. Hence, she filed a suit to implement the undertaking, but the trial judge refused to number the plaint stating that such direction cannot be given. Accordingly, the plaint was rejected. Challenging the said findings, the revision petitioner/plaintiff preferred this Civil Revision Petition.



C.R.P.No.4033 of 2023

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4. The learned counsel for Revision Petitioner would submit that during the division of property among brothers and sisters, the defendants gave undertaking that they agreed to execute the gift deed in respect of certain properties by an unregistered undertaking. But, they failed to execute the case as per the said undertaking. So, the plaintiff is entitled to implement the said condition. But, without considering her submissions, before numbering the plaint, the trial judge rejected the plaint. Hence, she prayed to set aside the findings of the trial judge.

5. Records perused. On perusal of entire plaint averments, it reveals that the plaintiff approached the court seeking for the relief of division of property as per the undertaking given by the defendants. But, it is not a plaint seeking for ordinary direction. However, the fact reveals that while dividing the properties, other family members have agreed to execute a Gift deed, and when they failed, she approached the court, as such is acceptable one. But, without considering the plaint averments, the trial judge erroneously dismissed the application, as such is erroneous one and



C.R.P.No.4033 of 2023

the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed. However, after bifurcation, the jurisdiction of this case is transferred to Sub-Court, Ambur. The Sub-Judge, Ambur is directed to take the plaint on file and number the suit within a period of two weeks from the date of receipt of copy of this order. No costs.

28.11.2023

Index : Yes/No

Speaking Order : Yes/No

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To

The Subordinate Judge, Vaniyambadi, Vellore District.



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C.R.P.No.4033 of 2023

T.V.THAMILSELVI, J.

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C.R.P.No.4033 of 2023

28.11.2023