



C.R.P(MD)No.1821 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1821 of 2021

and

C.M.P(MD)No.9758 of 2021

1.E.Muthaiah Pillai

2.E.Chandrasekar

... Revision Petitioners/
Respondents 1 & 2/
Plaintiffs 1 & 2

Vs.

1.Ulaganathan

2.Muthu Ananthi

3.Parvathi

4.A. Muthuaiah

... 1st Respondent/
Petitioner/3rd party

... Respondents 2 to 4/
Respondents 3 to 5 /
Defendants 1 to 3

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order, dated 10.08.2021 passed in I.A.No.8 of 2021 in O.S.No.194 of 2018 on the file of the Principal District Judge, Tirunelveli.



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For P1 : Mr.K.Rajeshwaran

For P2 : Mr. K. Suresh Subramanian

For R1, R3 & R4 : No Appearance

For R2 : Mr. K. Sudalaiyandi

ORDER

The present Civil Revision petition has been filed against the fair and decretal order, dated 10.08.2021 passed in I.A.No.8 of 2021 in O.S.No.194 of 2018 on the file of the Principal District Judge, Tirunelveli.

2. By the impugned order, dated 10.03.2021, the Principal District Judge, Tirunelveli has allowed I.A.No.8 of 2021 filed by the first respondent herein under Order III Rule 2 of C.P.C., to conduct the case on behalf of the first defendant on his power agent.

3. O.S.No.194 of 2018 has been filed for a permanent injunction to restrain the defendants 1 to 3 from interfering with the peaceful possession of the property and to declare Settlement Deed, dated 17.12.2012 as Document No.5631 of 2012 and sale deed, dated



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16.03.2017 vide Document No.518 of 2017 are null and void before the Principal District Court, Tirunelveli.

4. In the said suit, the application in I.A.No.8 of 2021 under Order III Rule 2 of C.P.C was filed by the first respondent herein to conduct the case evidence on behalf of the second respondent/first defendant. The application has been allowed by the Trial Court vide impugned fair and decretal order, dated 10.08.2021. The relevant portion of the order reads as under:

"6.Point:

This petition is filed by the petitioner to permit him to conduct the main suit on behalf of the first defendant as power agent. The learned counsel for the petitioner submitted that the main suit is filed for the relief of declaration as alleged sale deeds dated 17.12.2012 and 16.03.2017 are null and void. The suit is pending for defendants side evidence. In this regard first defendant has executed a power deed infavour of this petitioner on 06.03.2021 regarding the suit schedule property. Since she is taking Siddha treatment for her stomach pain, she could not appear before the court and unable to conduct the case proceedings and as a brother of first defendant, this petitioner had a knowledge about the suit property. Therefore she executed the said power deed in favour of the petitioner.

7.The learned counsel for the respondents/plaintiff's contended that this petitioner has no connection with the original suit and the power deed filed by the petitioner is a forged document. Only if the first defendant appears before this court and give evidence, this Court will be able to know the facts of the written statement. The testimony of



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third party is not acceptable one, therefore the petition has to be dismissed.

8. Both side heard. Records perused. It is seen that the first respondent has executed a power deed in favour of this petitioner with regard to the suit property. The Power deed is produced. It can be received. But the evidence of power agent is acceptable or not can be decided only after the completion of trial and at the time of argument. Therefore in this circumstance, this Court decides that this petition can be allowed.

In the result, this petition is allowed without costs.

5. The learned counsel for the petitioner submits that a fraud was perpetrated by the third defendant in the suit by impersonating the petitioner by taking advantage of the identical name between them. It is submitted that the settlement deed was executed by the third defendant in favour of the first defendant on 17.12.2012 by impersonating and that the first defendant in turn executed a Sale Deed in favour of the second defendant on 16.03.2017 vide Document No.581 of 2017. Thus, the first respondent filed I.A.No.8 of 2021 under Order III Rule 2 of C.P.C to depose evidence. It is submitted that only the first defendant has been examined along with the third defendant in the suit. It is submitted that the defendants have colluded with each other to highjack the property which rightly belongs to the plaintiff.



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6. In my view, the trial Court ought to have been cautious and not allowed the application filed under Order 3 Rule 2 of C.P.C by the first respondent/third party to represent the first respondent/defendant.

7. Considering the fact that the second respondent/first defendant herein is not an infirmed person or is in capable of giving evidence regarding the sale effected, the impugned order is liable to be set aside. The Trial Court is directed to complete the Trial and Dispose of the suit as expeditiously as possible preferably within a period of 9 months from the date of receipt of copy of this order.

8. The present Civil Revision Petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

30.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Principal District Judge, Tirunelveli.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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