



C.R.P.(MD).No.2018 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2018 of 2018

and

C.M.P(MD) No.8922 of 2018

Sarala Austin (Died)

Vanitha Robert

... Petitioner/1st Petitioner/
Plaintiff

-vs-

Vinoo Austin

... Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.06.2018 made in I.A.No.397 of 2017 in O.S.No.171 of 2015 on the file of I Additional District Court (PCR), Tiruchirapalli.

For Petitioner : Mr.A.Arumugam
for M/s.Ajmal Khan Associates

For Respondent : Mrs.J.Maria Roselin



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ORDER

The instant Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 21.06.2018 made in I.A.No.397 of 2017 in O.S.No.171 of 2015 on the file of 1 Additional District Court (PCR), Tiruchirapalli.

2. The learned Senior Counsel appearing for the petitioner would submit that the application in respect of striking out of issue No.2 and recasting of issue No.4 was dismissed by the Court below, which is erroneous, for which, the learned Senior Counsel would further submit that when the executant of the settlement deed is party to the plaint along with the daughter in whose name of the settlement deed was executed, the very framing of issue in respect of the validity of the settlement does not arise.

3. However, the learned counsel appearing for the respondent would submit that the defendant took a specific contention that, the very execution of the settlement deed is seriously doubtful, in view of the advanced age of the second plaintiff, settlor, namely, the mother of the first plaintiff, and also



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raised an objection in respect of the foul play alleged to have been made by the first plaintiff. Therefore, the learned counsel appearing for the respondent would submit that the framing of the issue cannot be found faulted.

4. This Court has given it's anxious consideration to the submissions of the learned counsel on either side.

5. While considering the framing of the issue, Order 14 Rule 1 of CP.C, mandates to frame issue, whenever the fact or law affirmed by the one party and disputed by the other parties. Here, the plaintiff has come forward with the suit based upon the settlement deed, dated 02.04.2014. Whereas the defendant has strongly objected the very execution of the said settlement deed. Therefore, in view of such a peculiar defence, naturally as per Order 14 Rule 1 of C.P.C, the framing of issue No.2 cannot be found faulted with.

6. Coming to the recasting of the issue, it is settled principle of law that, whenever the persons come forward to file a suit, the burden of proof is fully upon them. Here the issue framed squarely rests burden of proof upon the plaintiff. Therefore, it is the submission of the learned Senior Counsel that



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the issue to be framed in such a way to shift the burden of proof on the defendant. The shifting of burden will only come after the initial discharge of burden by the plaintiff. Therefore, on the face of it, the very prayer for recasting of the issue is also erroneous. In view of the above discussions, this Court is of the view that the findings recorded by the trial Court is liable to be confirmed.

7. In the result, this Civil Revision Petition is **dismissed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

25.09.2023

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

To
1. The 1 Additional District Court (PCR),
Tiruchirapalli.



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C.KUMARAPPAN,J.

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