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CRP No.826 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.826 of 2024 and

CMP No.4097 of 2024

Diagou Mudaliar Trust,
rep. by its Present Superintendent
Mr.Arokiasamy Samuel Gnanou Diagou,
s/o Jaganou Diagou, residing at No43,
Rangapillai Street, Puducherry.

... Petitioner

/vs/

1. Damayandhi
2. S.Padmini

... Respondents

PRAYER : Civil Revision Petition filed under Section 227 of the Constitution of India to set aside the order passed on the memo filed by the petitioner dated 27.11.2023 in O.S.No.105/2009, by the I Additional District Munsif, Puducherry.

For Petitioner ... Mr. C.Prabakaran

ORDER

This civil revision petition has been filed to side the order passed on the memo filed by the petitioner, dated 27.11.2023 in O.S.No.105/2009,



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by the learned I Additional District Munsif, Puducherry.

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2. The petitioner herein is the plaintiff and the respondents herein are the defendants in the above said suit, which is filed " *for declaration, declaring that the sale deed dated 30.03.2007 and registered before the Sub Registrar, Oulgaret on 21.06.2007, executed by the first defendant in favour of the second defendant is null and void and nonest in law and also for permanent injunction restraining the second defendant from alienating or encumbering the B schedule property and restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the A and B schedule property* ". Pending suit, the second respondent/ second defendant had filed an application in I.A.No.439/2002 for reception of a partition deed, as an additional document, by condoning the delay, and the same was allowed by the Trial Court on 11.11.2022. Challenging the same, the petitioner has filed CRP No.247/2023 before this court and the same was allowed, by holding that, since the document was executed during the pendency of the proceeding, the said document cannot be received directly as evidence, unless opportunity is given to the plaintiff to



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dispute the validity of the document. While allowing the above CRP, this court has directed the respondents/defendant to file an additional written statement in respect of the said partition deed and on such filing of statement, liberty is given to the petitioner/plaintiff to file a reply statement and thereafter, the trial court is directed to proceed with the Trial, as per the manner known to law. To that effect, the petitioner has filed a memo dated 27.11.2023 along with the web copy of the order passed by this court in the above CRP and to record the same and direct the defendants to file additional written statement, if any.

3. On receipt of the above said memo dated 27.11.2023, the learned Judge has passed the docket order as follows.

" Plaintiff counsel present. Memo stated that, Honourable High Court allowed CRP No.247 of 2023 and the findings given to I.A.No.439 of 2022 order hereby set aside and directed the defendant to file Additional Written Statement in respect of partition deed. On such written statement, liberty is given to the petitioner to file a reply statement. ***As per order of the Hon'ble High Court in CRP No.247/2023, I.A.No.439/2022 is allowed. Partition deed received as document. Hence, posted for additional written statement. Call on 06.12.2023.***



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Hence, challenging the same, the present civil revision petition has been filed.

4. Heard the learned counsel for the petitioner and I have perused the materials on record.

5. Admittedly, the order passed in I.A.No.439/2022, allowing to receive the partition deed, was set aside by this Court, vide common order dated 19.10.223 in CRP No.247 & 506/2023, by directing the respondents/defendants to file an additional written statement, in respect of the said partition deed and on such filing of statement, liberty was given to the petitioner/plaintiff to file a reply statement and thereafter, the trial court is directed to proceed with the Trial, as per the manner known to law. To that effect, the petitioner has also filed a memo, dated 27.11.2023, along with the web copy of the order passed in the above CRP. However, the learned Judge, while ordering on the memo, has passed the docket order as "***As per order of the Hon'ble High Court in CRP No.247/2023, I.A.No.439/2022 is allowed. Partition deed received as document.***"



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Hence, posted for additional written statement. Call on 06.12.2023. "

Therefore, the order dated 27.11.2023, passed by the learned trial Judge on the memo dated 27.11.2023 is liable to be set aside.

6. Accordingly, this civil revision petition is allowed and the order dated 27.11.2023, passed by the learned trial Judge, on the memo filed by the petitioner, dated 27.11.2023, is hereby set aside. Consequently, connected miscellaneous petition is closed. The learned Trial Judge is directed to pass fresh orders on the above said memo, in accordance with the direction given by this Court in CRP No.247/2023, dated 19.10.2023.

26.02.2024

Index : Yes/No

Internet : Yes/No

mst

To

The I Additional District Munsif, Puducherry.



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V.SIVAGNANAM ,J.

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