



C.R.P.No.349 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.349 of 2023
and C.M.P.No.2903 of 2023

1.Dhanam
2.Valarmathi

... Petitioners

-Vs-

1.Arukkani
2.Vembu
3.Minnalkodi
4.Nanerajan

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order passed in I.A.No.8/2022 in O.S.No.7/2021 on the file of the Additional District Judge, Ariyalur dated 19.12.2022.

For Petitioners : Mr.S.Kamadevan

For Respondents : Mr.R.Thiyagarajan

ORDER

This Civil Revision Petition arises against the order of the learned Additional District Judge, Ariyalur dated 19.12.2022 in I.A.No.8 of 2022 in O.S.No.7 of 2021.

For the sake of convenience, the parties will be referred to as per their ranking in the suit.



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3. O.S.No.7 of 2021 is a suit for partition and separate possession claiming 2/5 share in total for the plaintiffs. There is no dispute in the relationship between the parties. Plaintiffs 1 and 2 and the defendants 1 to 3 are siblings. Defendants 4 and 5 are purchasers of the property from the defendants 1 to 3.

4. On service of summons, the defendants entered appearance. It is the case of the third defendant that there has already been a partition in the family and the property left in the family to an extent of 2 acres 80 cents was divided into five equal shares viz., 56 cents to each of the sisters. It is the further plea of the third defendant that the husband of the first plaintiff one Ragarathinam had obtained a portion of the properties in the suit schedule III and V to an extent of 3 cents in S.F.No.222/17 and S.F.No.221/2A and to an extent of 26 cents in Venmaankondan village, Udayarpalayam Tauk, Ariyalur District free of cost. On account of the same, the properties which have been alienated by the five sisters in favour of Ragarathinam have not been included in the schedule of property.

5. Therefore, the third defendant took out an application to include the said property in the schedule to the plaint. This application was resisted by the plaintiff stating that the property had already been sold to the first plaintiff's husband and the entire idea of filing the application to include the property so alienated in favour Ragarathinam as a part of the schedule to the suit was a ploy to pressurise the plaintiffs to settle the matter. The learned trial Judge, on consideration, allowed



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the application against which the present revision.

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6. I heard Mr.S.Kamadevan for the petitioners and Mr.R.Thiyagarajan for the respondents.

7. At the outset I have to point out that there is no dispute, from a reading of the written statement, that the property proposed to be included had been alienated by the five sisters viz., the plaintiffs and defendants 1 to 3 in favour of Ragarathinam on 06.03.2014. The present suit came to be filed on 01.02.2021. The sale deed has not been attacked by the third defendant. In the written statement, a plea has been taken that the sale in favour of Ragarathinam dated 06.03.2014 is without any consideration. If the property alienated in favour of Ragarathinam would have to be made a subject matter of the partition suit, it is necessary that the purchaser Ragarathinam has to be made a party to the suit and the third defendant ought to have made a counter claim seeking for cancellation of the sale deed. Unless and until the sale deed is cancelled, it is not open to the vendors to claim partition in the same. This is by virtue of Sections 54 and 55 of the Transfer of Property Act. On the execution and registration of the document, title has passed to Ragarathinam.

8. Therefore, in the absence of the purchaser and in the absence of counter



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claim challenging the sale deed, I feel the application to include the properties is not maintainable. The finding of the learned Judge that allowing of the application will not change the character of the suit might be correct. However, the said relief cannot be granted as pointed out above, unless and until the sale deed is cancelled and the said Ragarathinam is made a party to the suit. Both aspects are absent in the present suit. The inclusion of the property alone will not suffice.

9. In fine, the civil revision petition stands allowed. The order passed by the learned Additional District Judge, Ariyalur dated 19.12.2022 in I.A.No.8/2022 in O.S.No.7/2021 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

09.07.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The Additional District Judge
Ariyalur.



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V. LAKSHMINARAYANAN, J.

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