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C.R.P.No.754 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM:

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

C.R.P.No.754 of 2023

and

C.M.P.No.5842 of 2023

R.Saravanan

... Petitioner

-Vs-

1. R.Shanthi
2. C.D.Jayalakshmi
3. R.Srinivasan
4. R.Karnakaran
5. R.Kalaivani

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the docket order dated 09.01.2023 made in E.A.SR.No. 7405 of 2022 in E.P.No.11 of 2019 in O.S. No.150 of 2010 on the file of the Principal Sub-Court, Krishnagiri and directed the court below to number the Execution Application and dispose it on merits.

For Petitioner : Mr.S.Thirumavalavan

For Respondents : Mr.R.V.Agilan for R1, R2 & R5

Mr. S.Pattabiraman for R3 & R4



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ORDER

Challenging the impugned docket order passed in dated 09.01.2023 made in E.A.SR.No. 7405 of 2022 in E.P.No.11 of 2019 in O.S. No.150 of 2010 on the file of the Principal Sub-Court, Krishnagiri, the Revision Petitioner/2nd respondent preferred this Civil Revision Petition.

2. Before the executing court, the Revision Petitioner filed an application by invoking Sec.151 of C.P.C. praying to pass an order for joint trial in R.E.P.No. 11 of 2019 and O.S.No.7 of 2015 pending before the learned Sub-Court, Krishnagiri. The reason assigned by the Revision Petitioner is that he is the 1st defendant in the suit in O.S.No.7 of 2015 and the same was filed to declare the registered partition deed dated 22.02.2013 as null and void and other consequential relief. But, before that, the 1st respondent herein as a plaintiff filed another suit in O.S.No. 1 of 2000 seeking for the relief of partition and the same was transferred to Addl. District Judge, Krishnagiri and renumbered as O.S.No.10 of 2004. The said suit was contested by both parties and after that, a preliminary decree was passed. Based on that, the 1st respondent/plaintiff filed the final



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decree proceedings in I.A.No.425 of 2010. During the pendency of the final decree proceedings, there was another suit filed by her seeking for the relief of partition in O.S.No.150 of 2010, wherein the parties therein have entered into a compromise, thereby the family members have resolved to receive share value instead of seeking share in the immovable property. Thereafter, all the parties have executed a partition deed dated 22.02.2013, however, to avoid the tax purpose, lesser amount was mentioned. Now, for unlawful enrichment, the 1st respondent/plaintiff along with respondents 2 and 5 jointly colluded and executed a fake document of unregistered partition deed dated 15.03.2013 and they have jointly filed a suit in O.S.No. 7 of 2015 stating that they are having valid defence. Therefore, the material documents would show that the entire amount was paid to the respondents 1, 2 and 5, but without considering all those documents, a preliminary decree as well as final decree was passed in O.S.No.150 of 2010. Based on that, the 1st respondent/plaintiff initiated execution proceedings in R.E.P.No.11 of 2019. But, as per the order dated 14.09.2021 passed in C.R.P.No.535 of 2021, the final decree proceedings was not abstained by this court, however remanded the matter for fresh consideration in the light of registered partition deed dated 22.03.2013 and



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unregistered partition agreement dated 15.03.2013. So, as on date, no final decree proceedings is pending and as per the order of this court, the Principal Sub-Judge, Krishnagiri is bound to try the suit in O.S.No.150 of 2010 by fresh consideration, besides the suit in O.S.No.7 of 2015 also and now the case is at the stage of P.W.1 evidence. Therefore, to avoid multiplicity of proceedings, he wanted to try R.E.P.No. 11 of 2019 along with the suit in O.S.No.7 of 2015. But the executing court rejected the said petition stating that the procedures for the suit as well as execution petition differs from each other. Moreover, there is no findings with regard to the joint trial in the C.R.P. Proceedings. Therefore, the petition was returned. Aggrieved over the same, the Revision Petitioner preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner would submit that since the unregistered partition deed as well as registered partition deed concerned with the final decree proceedings in the suit in O.S.No.150 of 2010 and the petition in R.E.P.No.11 of 2019 was already disposed of in the earlier C.R.P. proceedings. Though there is no order for joint trial, the execution proceedings was set aside and remanded back the matter for fresh consideration to the trial court. Therefore, the Revision Petitioner is



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entitled for joint trial of R.E.P.No. 11 of 2019 along with the suit in O.S.No.7 of 2015. Hence, he prayed to set aside the findings of executing court.

4. Admittedly, on perusal of the order passed in C.R.P.No.535 of 2021, the execution proceedings initiated in R.E.P.No.11 of 2019 based on the final decree proceedings passed in O.S.No.150 of 2010 was set aside and the entire matter was remanded back to the learned Principal Sub-Judge, Krishnagiri for fresh consideration in the light of registered partition deed dated 22.02.2013 and unregistered partition agreement dated 15.03.2013. Therefore, as on date, the execution proceedings initiated by the decree holder/plaintiff is not in force nor it restored to the original proceedings by way of joint trial. Therefore, to avoid further complications, the revision petitioner is entitled for joint trial, but not along with R.E.P.No. 11 of 2019, since because as per the order passed in C.R.P.No.535 of 2021, the execution proceedings in the said petition was set aside. However, to avoid multiplicity of proceedings, the revision petitioner is entitled for joint trial of suit in O.S.No.150 of 2010 along with the suit in O.S.No.7 of 2015 pending before the same learned Principal Sub-Judge, Krishnagiri to be tried jointly. Though the Revision



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Petitioner prayed for joint trial, as per the order passed in C.R.P.No.535 of

2021, the execution proceedings in R.E.P.No.11 of 2019 is not in force.

So, both the suits can be tried jointly. Accordingly, this Civil Revision

Petition is allowed and the findings of executing court in the docket order

passed in E.A.SR.No.7405 of 2022 in R.E.P.No. 11 of 2019 in O.S.No.150

of 2010 is set aside. The learned Principal Sub-Judge, Krishnagiri is

directed to conduct joint trial of both suits in O.S.No. 150 of 2010 and

O.S.No. 7 of 2015. No costs. Consequently, the connected Civil

Miscellaneous Petition is closed.

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Index : Yes/No

Speaking Order : Yes/No

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To

The Principal Sub-Court, Krishnagiri.



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T.V.THAMILSELVI, J.

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