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C.R.P.No.436 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.436 of 2023 and
C.M.P.No.3669 of 2023

B.Kamalaveni

... Petitioner

Vs.

1.V.Karthikrishnan
2.V.Govindarajan
3.The Sub Registrar,
Sembium, Chennai 600 011.

4.G.Nalini

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.5 of 2022 in O.S.No.6140 of 2012 dated 23.01.2023 on the file of the learned II Additional Judge, City Civil Court, Chennai, by allowing this Civil Revision Petition.

For Petitioner : Mr.R.Ravi

For Respondents : Ms.Deepika for
Mr.R.Manickavel for R1
Mr.I.Arokiasamy for R2
Mr.C.Sathish, GA for R3
No representation for R4

ORDER



C.R.P.No.436 of 2023

This Civil Revision Petition has been preferred to set aside the fair and decreetal order passed in I.A.No.5 of 2022 in O.S.No.6140 of 2012 dated 23.01.2023 on the file of the learned II Additional Judge, City Civil Court, Chennai.

2. The Civil Revision Petitioner is the plaintiff in the suit. O.S.No.6140 of 2012 was presented for the following reliefs:

(a) for a declaration declaring that the cancellation of the settlement deed registered as Document No.6599 of 2010 dated 13.08.2010 at S.R.O. Sembium, is null and void;

(b) for a declaration, declaring that the partition deed registered as Document No.2090/2012 dated 13.07.2012 executed between the first and second defendant is null and void;

(c) for a partition by metes and bounds of the schedule C mentioned property and to allot the plaintiff's legitimate 1/3rd share;

(d) for a mandatory direction, directing the 3rd defendant not to entertain any registration in respect of the schedule A, B and C mentioned properties;



C.R.P.No.436 of 2023

(e) for a permanent injunction against the 1st and 2nd defendants or their men or agents from in any manner interfering and disturbing the plaintiff's peaceful possession and enjoyment of the schedule B mentioned property;

(f) for a permanent injunction against the 1st and 2nd defendants not to alienate or encumber the suit schedule A, B and C properties to any third party.

3. The relationship between the parties is not in dispute. The original owner of the property was one Venkatraman. He is the father of the plaintiff and the first and second defendants. These three children were born to him from the wedlock of Mr.Venkatraman with one Tmt.Leela. It is further not in dispute that Mr.Venkatraman passed away in the year 2010 and Tmt.Leela passed away in the year 2012.

4. The claim of the plaintiff is that out of the natural love and affection, Mr.Venkatraman had executed four settlement deeds for the 'A' schedule mentioned property. He had settled 1/4th undivided share each in favour of the plaintiff, second defendant and his wife Tmt.Leela and his daughter-in-law



C.R.P.No.436 of 2023

(wife of the first defendant) Mrs.Nalini. The settlement deed in the plaintiff's favour was executed on 25.01.2006. On 13.08.2010, this settlement deed was cancelled. Subsequently, on the death of Tmt.Leela, Mr.V.Govindarajan (i.e) the first defendant and Mr.V.Karthikrishnan partitioned the property of their mother amongst themselves to the exclusion of the plaintiff. This partition document was executed on 13.07.2012. Feeling aggrieved over the cancellation of the settlement deed executed by her father Venkatraman in her favour and in being excluded from the participation of the assets of the mother, she presented the suit for the aforesaid reliefs.

5. The 'A' schedule property is the entire extent which had been parcelled out into four parts. The 'B' schedule property is the property which was settled in favour of the plaintiff in the year 2006. The 'C' schedule property is the property which fell to the share of the mother Tmt.Leela. Written statements were presented and the parties went to trial and the evidence was also closed.

6. At that stage, the second defendant filed an application to implead his sister-in-law Mrs.Nalini as a party defendant to the suit. The plea of the second



C.R.P.No.436 of 2023

defendant is that as Venkatraman had settled a portion of the property in the 'A' schedule in favour of Mrs.Nalini and since the relief was sought for in respect to 'A', 'B' and 'C' schedule properties, she must necessarily has to be impleaded as a party defendant. This was opposed by the Civil Revision Petitioner.

7. The learned Judge, after discussing the facts and pleadings, came to a conclusion that in a suit for partition where anybody has a semblance of interest in the subject matter, he/she is entitled to be impleaded as a party to the suit. Aggrieved by the same, the said Revision.

8. Heard, Mr.R.Ravi, learned counsel for the Civil Revision Petitioner and Ms.Deepika, learned counsel for the first respondent.

9. I pointed out Mr.R.Ravi that the plaint seeking for reliefs as against 'A', 'B' and 'C' schedule mentioned properties in prayer as found in paragraph Nos.15(d) and 15(f) of the plaint. Hence, the proposed party may have some interest in the suit proceedings. Mr.R.Ravi submits that he has been instructed by the plaintiff to give up the claim in so far as 'A' and 'C' schedule mentioned



C.R.P.No.436 of 2023

properties are concerned and that she is interested in prosecuting the suit only with respect to the property covered under the 'B' schedule. The claim of the plaintiff is now confined to the property which had been settled in her favour in the year 2006 and later cancelled in the year 2010. If that being the situation, then Mrs.Nalini who has no interest over in the 'B' schedule mentioned property need not be impleaded as a party.

10. Mr.R.Ravi points out that after the orders has been reserved in this revision on 28.04.2023, the suit came to be dismissed for default and subsequently restored. It is now listed for hearing on 16.10.2024. Mr.R.Ravi argues that immediately after the dismissal of the suit for default, the defendants 1 and 2 have taken forcible possession of the property. This is stoutly denied by Ms.Deepika. Whether possession has been taken from the plaintiff or whether the possession was already with the defendants is the matter which has to be gone into at the time of trial.

11. Suffice it to record that since the plaintiff has confined her relief only to 'B' schedule mentioned property and since Mrs.Nalini cannot have any claim over the said 'B' schedule property, she is not a proper and necessary party to



C.R.P.No.436 of 2023

the proceedings. I record the statement of Mr.R.Ravi that, the plaintiff does not have any claim over the 'A' schedule or 'C' schedule mentioned properties.

12. In the light of the subsequent developments, this Civil Revision Petition is allowed and the order passed by the learned II Additional Judge, City Civil Court, Chennai, in I.A.No.5 of 2022 in O.S.No.6140 of 2012 dated 23.01.2023 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Speaking / Non Speaking Order
gsk

04.10.2024



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C.R.P.No.436 of 2023

V.LAKSHMINARAYANAN,J.

gsk

To

1.II Additional Judge, City Civil Court, Chennai.

2.The Sub Registrar,

Sembium, Chennai 600 011.

C.R.P.No.436 of 2023 and
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