



CRP No.630 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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1.Radha
2.Mangai

... Petitioners

Vs.

M.Selvarasu

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order in IA No.1 of 2022 in OS No.142 of 2019 dated 03.01.2023 passed by the learned Special Subordinate Judge (LAOP Cases), Vellore.

For Petitioners : Mr.G.Pugazhenth

For Respondent : Mr.A.Gouthaman



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ORDER

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The civil revision petition is filed to set aside the fair and decreetal order in IA No.1 of 2022 in OS No.142 of 2019 dated 03.01.2023 passed by the learned Special Subordinate Judge (LAOP Cases), Vellore.

2. The petitioners are defendants 1 and 2 and respondent is plaintiff in OS No.142 of 2019 on the file of the Special Subordinate Judge (LAOP Cases), Vellore. The respondent/plaintiff has filed the suit against the petitioners/defendants seeking to declare the settlement deed dated 19.10.2015 executed by the first petitioner/first defendant's mother is not binding the rights of the respondent and to evict the petitioners from the suit property. According to the petitioners, petitioners are entitled for 2/5th share in the suit properties. Therefore, they filed the instant application in IA No.1 of 2022 to permit them to file additional written statement in the suit by way of counter claim and receive the same. The trial court, by order dated 03.01.2023, had dismissed the said application on the ground that issues have already been framed and trial has been commenced and the case



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was also posted for cross examination. Challenging the said order, the petitioners have filed the present civil revision petition.

3. Learned counsel for the petitioners submit that the petitioners are entitled for 2/5 share in the schedule mentioned properties. Therefore, it cannot be declared as null and void without deciding their counter claim. Hence, he seeks for setting aside the order passed by the trial court.

4. Learned counsel for the respondent supported the impugned order passed by the trial court and seeks for dismissal of the civil revision petition as there is no merit.

5. Heard the parties and perused the materials available on record.

6. The petitioners are defendants 1 and 2 and respondent is plaintiff in OS No.142 of 2019 on the file of the Special Subordinate Judge (LAOP Cases), Vellore. The respondent/plaintiff has filed the suit against the



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petitioners/defendants seeking to declare the settlement deed dated 19.10.2015 executed by the first petitioner/first defendant's mother is not binding the rights of the respondent and to evict the petitioners from the suit property.

7. On a perusal of the impugned order, it is seen that in the counter filed by the respondent/plaintiff, it is stated that the petitioners have already filed a suit in OS No.1109 of 2004 before the learned District Munsif Court, Vellore for partition and a preliminary decree was passed in the said suit. In these circumstances, filing a counter claim in the suit OS No.142 of 2019 is unwarranted. The petitioners can very well file another application before the District Munsif Court, Vellore in OS No.1109 of 2004 on the ground of omission of the property in question for partition and seeking to pass fresh preliminary decree including this property. Therefore, counter claim in the instant suit is unwarranted and the trial court has rightly dismissed the said application. There is no infirmity in the order dated 03.01.2023 passed by the trial court. There is no merit in the civil revision petition. Hence, the



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civil miscellaneous petition is dismissed. Liberty is granted to the petitioners to work out their remedy before the District Munsif Court in OS No.1109 of 2004 for including the property in question for partition. There shall be no order as to costs. Consequently, CMP No.4965 of 2023 is closed.

08.02.2024

Index: Yes/No
Internet: Yes/No
mrn

To

- 1.The Special Subordinate Judge (LAOP Cases), Vellore.
2. The District Munsif Court, Vellore



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V.SIVAGNANAM, J.

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