



CRP.No.1657 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.1657 of 2024
and CMP.No.8751 of 2024

S.Kirubananthan

... Petitioner

Vs

1.Kamsala
2.Dhanam
3.Dharmendhiran
4.Krishnasamy
5.Shanthi

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the rejection of unnumbered I.A.SR.No.625 of 2024 in O.S.No.179/2021 dated 03.02.2024 on the file of the I Additional District Judge, Tindivanam, Villupuram District.

For Petitioner : Mr.K.V.Sajeevkumar

ORDER

The petitioner before this Court is the plaintiff in O.S.No.179 of 2021 on the file of I Additional District Court, Tindivanam. He laid the suit



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against the defendants 1 to 5, who are the respondents herein, for a declaration that he is the owner of the property and also for a declaration that the two independent sale deeds, both dated 27.04.2021, executed by the third respondent as the Power of Attorney of the first respondent, in favour of the fourth respondent and fifth respondent are null and void.

2.1 The revision petitioner and the first respondent are husband and wife. In 2005, they purchased a property in Vanur and it was jointly registered in their names. Be that as it may, their matrimonial life ran into rough weather and several litigations in that regard exist between them. The first among those litigation, is H.M.O.P.No.58 of 2016 which is filed by the revision petitioner seeking divorce. Subsequently, he also laid a suit for damages against the first respondent in O.S.No.171/2016 before the Principal Sub Court, Tindivanam. According to the petitioner, pending the aforesaid litigations, on 17.08.2017, the first respondent had settled the property in favour of of her mother, the second respondent, who in turn had executed a settlement deed dated 15.04.2019 in favour of the first respondent. Thereafter, the first respondent executed a Power of Attorney in favour of the third respondent, through which she had sold the suit schedule property to the



fourth and fifth respondents by way of two sale deeds, both dated 27.04.2021.

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2.2 Alleging that the property was purchased only from his own income and he alone has absolute right in it, the petitioner preferred a suit for declaration in O.S.No.179 of 2021. Now the petitioner has preferred a petition under Section 10 of CPC to stay the suit in O.S.No.179/2021. He would state that on account of the pendency of H.M.O.P.No.58/2016 and O.S.No.171/2016, the present suit in O.S.No.179 of 2021 should be stayed. This petition was rejected by the learned Judge at the SR stage itself.

3. Aggrieved by the order of the learned Trial Judge, the present revision has been been.

4.Mr.K.V.Sajeevkumar, learned counsel for the petitioner would submit that the learned Trial Judge ought not to have assumed the role of the defendants while dismissing the petition. He would state that the order that had been passed by the learned Judge would be the defence of the defendants that would usually be stated in their counter, and the Court below should have numbered the petition and thereafter passed an order.



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5. Insofar as this plea is concerned, I can find some strength in the submissions of the learned counsel. However, the factum that has to be noticed is that the learned Judge has specifically found that the plaintiff/revision petitioner had given an undertaking that he will proceed with the matter in O.S.No.179/2021. Having given an undertaking to the Court, it does not lie in the mouth of the revision petitioner to seek stay of the said proceedings. Apart from that, I do not find any error in the findings of the learned Trial Judge that there is no commonality of issues in H.M.O.P.No.58/2016, O.S.No.171/2016 and the one before him. In fact, the cause of action of the present suit had arisen after the aforesaid proceedings were initiated. To reiterate, there is a condition under Section 10 of CPC that unless and until there is no commonality in issues, the question of stay does not arise. Furthermore, an order under Section 10 of CPC is discretionary, and is not capable of interference in revision, unless and until the order is capricious or arbitrary. Since, I do not find any elements of capriciousness or arbitrariness in the order, I am confirming the order of the learned I Additional District Judge, Tindivanam, Villupuram District in IA.SR.No.625/2024 in O.S.No.179 of 2021.



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Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking orders

To:

- 1.The I Additional District Judge
Tindivanam
Villupuram District.
- 2.The Section Officer
VR Section, High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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