



C.R.P.No.4069 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14..10..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.4069 of 2024

and

C.M.P.No.21179 of 2024

1.Mrs.K.Snegalatha

2.K.Parthiban

3.K.Chandran

4.C.Premnath

..... Petitioners

-Versus-



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- 1.K.Balaji
 - 2.Ms.P.Punithavathi
 - 3.Mrs.Bhavani
 - 4.K.Neelagandan
 - 5.Mrs.P.Padmavathi
 - 6.Mrs.Jeevambal
 - 7.K.Senthil Kumar
- Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 30.01.2024 made in I.A.No.7 of 2022 in O.S.No.330 of 2020 passed by the learned XVI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Kannan



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ORDER

This civil revision petition arises against an order of the learned XVI Assistant Judge, City Civil Court, Chennai dated 30.01.2024 in I.A.No.7 of 2022 in O.S.No.330 of 2020.

2. The plaintiff is the civil revision petitioner. O.S.No.330 of 2020 had been presented for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule mentioned property by the plaintiff. The plaintiffs are 5 in number. The plaintiffs 1 and 4 are the brothers. The 2nd plaintiff and the 3rd plaintiff are the daughter and son of the 1st plaintiff.

3. On service of summons, the defendants filed their written statement and also presented a counter-claim. In the counter claim, the defendants sought for the relief to set aside the deeds executed by between the following persons:

(i) release deed executed by K.Shanmugasundaram and Mrs.T.Sankari in favour of the plaintiffs 1 and 4 in respect of the suit schedule mentioned property;

(ii) release deed executed by Mrs.M.Susila in favour of the plaintiff 1 and



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4 and sale deed executed by one Kalayanasundaram in favour of the plaintiffs 1 and 4 in respect of suit schedule mentioned property;

(iii) release deed executed by K.V.Kalyanasundaram in favour of the plaintiffs 1 and 4;

(iv) partition deed executed between the plaintiffs 1 and 4 in respect of the suit schedule mentioned property;

(v) settlement deed executed by the 1st plaintiff in favour of the defendants 2 and 3; and

(vi) settlement deed executed by the 4th plaintiff in favour of the 5th plaintiff in respect of the suit scheduled mentioned property; and not binding on the defendants 2 and 3.

4. Pending suit, the 1st plaintiff passed away on 19.05.2021. The civil revision petitioners, who are the plaintiffs, pleaded that, as plaintiffs 2 and 3 are already on record, no other legal representatives need to be brought on record in the suit. However, defendants 2 and 3 took out an application to bring on record the wife and the son of the deceased 1st plaintiff. The learned Judge allowed the application. Hence, the present revision.

5. Mr.V.Kannan for the civil revision petitioner. I have gone through the records.



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6. The facts narrated above shows that the plaintiff seeks only a decree and judgement for a permanent injunction, but there is a counter claim seeking declaration and consequential reliefs against plaintiffs 1 and 4. The relationship between the 6th and 7th respondents to the revision with the deceased 1st plaintiff – K.Kittu is not in dispute. The 6th respondent is the wife of K.Kittu and the mother of the civil revision petitioners 1 and 2. Similarly, the 7th respondent – K.Senthil Kumar, is a sibling of civil revision petitioners 1 and 2.

7. By virtue of sub-section (11) of Section 2 of the Civil Procedure Code, 1908, any person who is intermiddling with the property is also a legal representative. The present case, is way better than such a situation.

8. All legal heirs are legal representatives, but the contrary need not be true. When the defendants seek a counter claim, it is necessary that all persons who represent the estate of the deceased 1st plaintiff in the counter claim are brought on record. The plaintiffs/civil revision petitioners did not take any steps to bring on record the wife and son of the deceased 1st plaintiff. In case the defendants did not bring them on record, it could have created complications



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at a later date, as the wife and son of the deceased-K.Kittu could always plead that they were not brought on record, and therefore, any order passed in the suit or in the counter claim would not be binding on them.

9. In order to obviate such circumstances, they have taken out an application to implead the wife and son of the deceased 1st plaintiff-K.Kittu.

10. At this stage, Mr.V.Kannan relying upon the judgement of the Supreme Court in the case of **Kanaklata Das v. Naba Kumar Das [AIR 2018 Supreme Court 682]** argues that applying this judgement, the learned Judge should have dismissed the application filed by the defendants for impleading the legal representatives.

11. A careful perusal of the said judgement shows that the plaintiff in that case had presented a petition for eviction before the Rent Controller. The proposed party, claiming to be a co-owner of the property, filed an application to implead himself as a party to the rent control proceedings. The Supreme Court, taking note of the fact, held that in an eviction proceeding, the proper and necessary parties are the landlord and tenant, and the presence of a co-owner is unnecessary. In fact, in paragraph 23, the Supreme Court specifically held that as the Rent Controller does not deal with matters of title, the question



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of bringing on record a co-owner to a proceeding is unnecessary.

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12. In the facts before us, as pointed out above, not only is the suit one for permanent injunction, but there is also a counter claim initiated by the respondents 1 and 2 as against the plaintiffs 1 and 4. Moreover, the relationship is not in dispute. When there is a counter claim, which will affect the interests of respondents 6 and 7, they would be necessary and proper parties to the proceedings.

13. In the light of the above discussion, I do not find any necessity to interfere with the order passed by the learned XVI Assistant Judge, City Civil Court, Chennai, in I.A. No. 7 of 2022 in O.S. No. 330 of 2020 dated 30.01.2024 made and the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1. The XVI Assistant Judge, City Civil Court, Chennai.



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V.LAKSHMINARAYANAN.J.,

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