



CRP No. 1191 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

CRP No. 1191 of 2023
and
C.M.P. No. 8200 of 2023

1.K.Velusamy
2.V.Arulmurugan
3.V.Sridevi ... Petitioners

Vs.

1.V.Radhika
2.S.Dhanasekaran ... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 10.10.2022 made in I.A.No.313 of 2018 in O.S.No.360 of 2018 on the file of the Sub Court, Paramathi.

For Petitioners : Mr.T.Murugamanickam,
Senior Counsel for
Ms.Zeenath Begum

For Respondent 1 : Mr.S.Ramesh for
Mr.T.Balaji

ORDER

This civil revision petition is at the instance of the plaintiffs in



O.S.No.360 of 2018 on the file of the learned Subordinate Judge at Paramathi.

2. Originally, a suit seeking several reliefs:

(i) declaration of title to the suit schedule mentioned properties, declaration that the sale agreement dated 10.04.2013 entered into between the first defendant and the second defendant and the consequential decree obtained by the second defendant in O.S.No.220 of 2013 on the file of the Sub Court at Namakkal on 27.02.2014 is null and void;

(ii) for permanent injunction restraining the second defendant from in any manner executing the decree in O.S.No.220 of 2013; and

(iii) also restraining from alienating the suit schedule mentioned properties,

was filed before the learned District Munsif at Paramathi in O.S.No.100 of 2014. Thereafter, the suit was transferred to the file of the Sub Court at Paramathi and it was renumbered as O.S.No.360 of 2018.

3. According to the plaintiffs, the suit items 1 to 7 are the separate properties of the first plaintiff and the suit items 8 to 12 are their undivided joint family properties. They would further plead that the first defendant had, after receipt of valid consideration, executed a release deed on 22.02.1999 releasing whatever right, title and interest she had over the properties



described as item Nos. 8 to 12. They would plead that suppressing this release deed, the first defendant entered into an agreement of sale on 10.4.2013 with the second defendant. The second defendant pleading that the first defendant had not executed the sale deed as agreed by her, presented a suit for specific performance in O.S.No.220 of 2013 and obtained a decree on 27.02.2014.

4. The gist of the case is that since the plaintiffs are the owners of the property and since the first defendant was bereft of any right over the same, she could not have transferred anything in favour of the second defendant and therefore, the decree obtained by the second defendant is of no avail.

5. A detailed written statement was presented by the first defendant.

6. Thereafter, the plaintiffs took out an application to amend the plaint. Originally it was presented before the District Munsif Court at Paramathi as I.A.No.570 of 2015 and on transfer to the Sub Court at Paramathi, it was renumbered as I.A.No.313 of 2018. The plea in the amendment application is that the character of the properties cannot be treated as joint family properties on account of the fact that on 25.10.1971, the properties, which are the subject matter of the amendment application, were partitioned between



Karuppannan, the father of the first plaintiff and the first plaintiff himself.

WEB COPY

7. The plaintiffs would plead that on 30.04.1976, the first plaintiff had purchased few other properties out of his self acquisitions. They would further plead that the first plaintiff's father, Karupannan had executed a Will on 26.08.1981 bequeathing the properties, which fell to him by virtue of a partition deed dated 25.10.1971, in favour of the first plaintiff. Therefore, they wanted to amend paragraph 3 of the plaint accordingly.

8. This application was opposed by the second defendant/ purchaser alone. The first defendant remained exparte in the said proceedings.

9. The Trial Judge, after consideration of the affidavit and counter, partly allowed the application permitting the incorporation of paragraph 3A as sought by the plaintiffs. However, the Trial Judge dismissed the application insofar as the deletion of the plea that all the properties are joint family properties. Hence this revision.

10. I have heard Mr.T.Murugamanickam, Senior Counsel for



Ms.Zeenath Begum for the civil revision petitioner and Mr.S.Ramesh for Mr.T.Balaji for the first respondent.

11. The case of the plaintiffs is that certain properties had been acquired by the first plaintiff in the year 1976 and few other items came into his hands by virtue of a “WILL” executed by his father. His father, Karuppannan became entitled to those properties by virtue of partition deed entered into between his father and the first plaintiff in the year 1971.

12. The fact that the plaint states that the properties are joint family properties does not stand in the way of the plaintiffs to show the source of title to the same. This is especially because the 1971 deed and 1976 deed are registered documents. Insofar as the “WILL” dated 26.08.1981 is concerned, the first plaintiff would still have to prove by adopting any one of the means under Sections 68 to 71 of the Indian Evidence Act that the “WILL” is true and genuine and that it was executed by his father, Karuppannan and it was duly attested by two attesting witnesses in the presence of a Doctor at JIPMER, Pondicherry.

13. The learned Trial Judge has treated the amendment application as



CRP No. 1191 of 2023

clarificatory in nature and has allowed the application.

WEB COPY

14. The fear of the plaintiffs that they will not be in a position to prove the source of title, in my view, is misplaced. The suit being one for declaration of title and for injunction, the plaintiff is entitled to plead and prove before the Court as to how he gets title to the property and the source by which he derives title to the same. By the mere fact that they have pleaded that all the properties are joint family properties does not mean the Court would automatically grant decree, since the very Court has permitted the plaintiffs to amend the plaint to incorporate paragraph 3A of the plaint.

15. In view of the above, I do not find any reason to interfere with the order of the Trial Court. Accordingly, this civil revision petition is dismissed no costs. Consequently, the connected miscellaneous petition is closed.

25.09.2024

nl

Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No



WEB COPY



CRP No. 1191 of 2020

To

1. The Sub Court, Paramathi.



WEB COPY



CRP No. 1191 of 2023

V.LAKSHMINARAYANAN, J.,

nl

CRP No. 1191 of 2023

25.09.2024