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C.R.P.NPD.Nos.1734 & 1735 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.NPD.Nos.1734 and 1735 of 2022 and
C.M.P.No.8758 of 2022

Marimuthu

... Petitioner in both CRPs

Vs.

- 1.Ravi @ Ravichandran
- 2.Durai
- 3.Rajappa
- 4.Kavitha
- 5.Jaya
- 6.Jayalalitha

... Respondents in both CRPs

(Since the respondents 2 & 3 remained
exparte in the court below, notice may be
dispensed with for them)

PRAYER: Revisions filed under Article 227 of the Constitution of India
praying to set aside the fair and decretal order passed in I.A.Nos.2 and 3
of 2021 in A.S.No.27 of 2017 dated 27.07.2021 on the file of the court of
Principal Subordinate Judge, Mayiladuthurai.

For Petitioner : Mr.A.Muthukumar

For R1, R4 & R6 : Mr.B.Jawahar

For R2 & R3 : Notice dispensed with



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COMMON ORDER

These two civil revision petitions arise against the order passed in I.A.Nos.2 and 3 of 2021 in A.S.No.27 of 2017 on the file of the Principal Subordinate Judge, Mayiladuthurai.

2. 1st respondent before me filed a suit for recovery of possession against the civil revision petitioner and respondents 2 and 3 before me. His case is that he had borrowed a sum of Rs.30,000/- for the purpose of his sister's marriage. As a security for the same, the civil revision petitioner had insisted upon the 1st respondent to execute a general power of attorney in his favour. Accordingly a general power of attorney was executed on 04.04.2001. The 1st respondent pleaded that along with the execution of the power of attorney, he had also handed over the possession of the property to the civil revision petitioner.

3. It is the further case that the 1st respondent father Kattari had entered into an agreement of sale on 30.11.1991 with the 2nd respondent Durai. Since the 2nd respondent did not perform his part of the contract, Kattari cancelled the sale agreement and took possession of the property. On the date of death of the 1st respondent's father, he had taken possession and was in enjoyment of the property.



4. When the 1st respondent wanted to take possession of the property, the civil revision petitioner insisted that the amount borrowed of Rs.30,000/- will have to be repaid with enormous interest. Being left with no other option, the power of attorney was executed on 04.04.2001 was cancelled on 29.12.2010. Thereafter the plaintiff/1st respondent issued a notice seeking delivery of possession of the property.

5. For the purpose of disposal of these revisions, it is suffice to state that the trial Court rejected the defence of the respondents herein and decreed the suit as prayed for. It directed the 1st plaintiff to deposit a sum of Rs.77,000/- together with interest within a period of two months.

6. Aggrieved by the judgment and decree, the civil revision petitioner preferred A.S.No.27 of 2017 before the Sub Court at Myiladuthurai. During the course of arguments in the appeal, the civil revision petitioner had urged before the Appellate Court that Kattari had left behind 3 daughters and they had not been impleaded as parties to the suit and the appeal deserves to be allowed. As a reaction of this argument, the applications to implead came to be filed and allowed, hence the revisions are before this Court.



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WEB COPY 7. Heard Mr.A.Muthukumar for the petitioner and Mr.B.Jawahar, for the respondents.

8. Mr.A.Muthukumar would submit that the appeal had been reserved for judgment and that stage the impleading application had been filed. He argued the application is belated and therefore they ought to have been dismissed by the learned Appellate Judge instead the application was allowed and thereby the life of the litigation has been prolonged.

9. Mr.B.Jawahar would submit that the applications had been filed on account of the fact it was the civil revision petitioner, as appellant, had argued that his sisters i.e., the daughters of Kattari are proper and necessary parties to the suit and as they have not been impleaded, the suit is not maintainable.

10. I have to decide whether the order impleading the sisters is justified or not.



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11. A reading of the written statement would go to show that nowhere such non impleading of the 1st respondent's sisters has been taken as a ground. Under Order I Rule 13 of the Code of Civil Procedure, if non impleading parties is not a specific ground in the written statement, it is deemed to have been waived. Nevertheless as the learned counsel for the civil revision petitioner before the Subordinate Court at Myiladuthurai had argued that the sisters are proper and necessary parties, the present applications came to be filed. It is not in dispute by either side that Kattari had left behind the 1st respondent and newly impleaded parties i.e., respondents 4 to 6 as legal representatives. Since the plea has been taken by the civil revision petitioner, in order to get over that plea, the present petitions have been filed.

12. As the relationship between the parties is admitted and in the event of success the 1st respondent/plaintiff as well as respondents 4 to 6 will have equal right in the property, I feel no prejudice would be caused to the civil revision petitioner/1st defendant if they are impleaded to the suit. The learned First Appellate Judge has exercised his discretion and allowed the applications. Normally this Court would not interfere with the exercise of discretion by the First Appellate Court unless and until the



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same has been exercised in a capricious manner. I do not find any error or fault in the order passed by the First Appellate Court. Consequently, both the Civil Revision Petitions are dismissed. No costs. Connected miscellaneous petition is also dismissed.

02.04.2024

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation : Yes / No
Sgl

To
The Principal Subordinate Judge,
Mayiladuthurai.



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V.LAKSHMINARAYANAN, J.

Sgl

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