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C.R.P. No.1340 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. No.1340 of 2022

Arogiadas

... Petitioner

Vs.

1.A.Arogiamary

2.A.Santhanam

3.A.Lasar

4.E.Roselin

5.A.Fathima

6.A.Mary

7.A.Magimairaj

... Respondents

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the fair and decreetal order dated 11.02.2021 in I.A.No.1 of 2019 in O.S.No.6757 of 2014 on the file of VI Assistant City Civil Court, Chennai.

For petitioner

: Mr.N.Mariappan

For Respondents

: Mr.T.Saravanan for R3 & R7

ORDER



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Challenging the order passed in I.A.No.1 of 2019 in O.S.No.6757 of 2014 on the file of VI Assistant City Civil Court, Chennai, dated 11.02.2021, in which, the trial Court has dismissed the application filed under Rule 81 of Civil Rules of Practice seeking to return the documents marked as Exs.A1 to A8 to the petitioner, the present civil revision petition has been filed.

2.Brief facts of the case:-

2.1.The petitioner had filed O.S.No.6757 of 2014 on the file of VI Assistant City Civil Court, Chennai, seeking for partition against the respondents, who are his mother and siblings viz.,the legal heirs of late Arogiyasamy. The property bearing No.226, vide Door No.982, New No.227, Gandhi Nagar, 6th Street, Vyasarpadi, Chennai-600 039, measuring an extent of 1200 sq.ft., was allotted by the Tamil Nadu Slum Clearance Board under “Vyasarpadi Thideer Nagar Scheme” in favour of late Arogiyaswamy, by an allotment order dated 21.10.1988 and in furtherance of the allotment order, lease cum Sale Agreement dated 17.10.1998 was executed in favour of the petitioner's father and 'No Objection Certificate' was also issued by the Slum Clearance Board for obtaining Electricity service connection and construction of building in



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the allotted plot. The petitioner's father had also put up construction after obtaining necessary permission from the Tamil Nadu Slum Clearance Board and continued to be in possession of the suit property as joint family.

2.2.The petitioner's father viz., Arogyaswamy died intestate on 05.12.1999 leaving behind him, the petitioner and the respondents as his legal heirs and thereby, all are having equal right and share in the said suit schedule property. After the death of the said Arogyaswamy, the first respondent being legally wedded wife, is entitled to 1/4th share and remaining share devolved upon the petitioner and respondents 2 to 7. Though the petitioner and respondents had decided to partition the suit property, respondents 2, 3 and 7 had not co-operated with the petitioner and thereby, the 4th respondent had made a police complaint before the B-5 Police Station and the resultant C.C.No.30028 of 2004 on the file of X Metropolitan Magistrate, Egmore, Chennai, had ended in acquittal vide order dated 30.08.2007.

2.3.Subsequently, the petitioner had filed a suit in O.S.No.6757 of 2014 on the file of VI Assistant City Civil Court, Chennai. The trial Court, by judgment dated 23.08.2017, had dismissed the suit holding that after the death of Arogyaswamy, neither the petitioner nor the



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respondents had chosen to take steps to execute the sale deed in their favour and so far, the title had not been conferred to both the parties and the allotment order alone granted in favour of said Arogiyaswamy exists without sale deed having been executed by the Tamil Nadu Slum Clearance Board and thereby, the partition could not be effected and the petitioner is not entitled for any relief as prayed for.

2.4.No appeal has been filed till date challenging the above judgment. Whiles, the petitioner has filed an application under Rule 81 of Civil Rules of Practice for return of the plaint documents viz., Exs.A1 to A8 to him. The respondents viz.,R1, R4 and R6 had filed counter contending that they are entitled for custody of the above documents. The Court below had dismissed I.A.No.1 of 2019 by an order dated 11.02.2021. Challenging the same, the present civil revision petition has been filed.

3.The crux of the submissions of the learned counsel for the petitioner is as under:-

The petitioner had produced the documents before the Court. Though the trial Court had dismissed the suit, the documents have not been impounded by the Court. As per Order 13 Rule 9 of C.P.C., the



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petitioner, who had produced the documents, is entitled for return of the documents produced by him. Only if the documents are returned, the petitioner would be able to produce the same before the Tamil Nadu Slum Clearance Board for executing the sale deed in favour of the legal heirs of Arogiyaswamy, original allottee. No prejudice would be caused to the respondents in the event of documents being returned to him by substituting the same with certified copies.

4.Mr.T.Saravanan, learned counsel entered appearance on behalf of R3 and R7. Despite service of notice and names of the other respondents having been printed in the cause list, there is no representation for them.

5.Mr.T.Saravanan, learned counsel appearing for the respondents 3 and 7 would submit that though the petitioner has produced those documents before the Court, based on the documents, he should not create any encumbrance of the property and other than that the learned counsel has no objection for the documents being returned to the petitioner.

6.The learned counsel for the petitioner undertakes that the



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petitioner would not create any encumbrance and if the other respondents join with the petitioner, he would be able to get the sale deed in favour of the first respondent, who is one of the legal heirs viz., the wife of the original allottee, Arogyaswamy and his siblings.

7. Admittedly the petitioner and respondents 2 to 7 are siblings of the deceased Arogyaswamy and the first respondent is the mother of parties. It is not in dispute that the documents sought to be returned are produced by the petitioner before the Court. In this regard, it is apposite to refer Order 13 Rule 9 of C.P.C.

13(9). **Return of admitted documents.**—(1) Any person, whether a party to the suit or not, desirous of receiving back any documents produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

- (a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and
- (b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:



[Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor—

(a) delivers to the proper officer for being substituted for the original,—

(i) in the case of a party to the suit, a certified copy, and

(ii) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and (b) undertakes to produce the original, if required to do so:] Provided also, that no document shall be returned with, by force of the decree, has become wholly void or useless

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

8.A reading of above provision makes it very clear that any person, whether party to the suit or not, desirous of receiving back any documents produced by him in the suit and placed on the record shall, unless the document is impounded under Rule 8, be entitled to receive back the same.

9.Considering the submissions made on behalf of both parties and



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the relevant provision, this Court is of the opinion that the petitioner, having produced the documents in the suit in O.S.No.6757 of 2014, is entitled for return of the same and thereby, the order passed by the VI Assistant City Civil Court, Chennai in I.A.No1 of 2019 dated 11.02.2021 is liable to set aside and accordingly, the same is set aside.

10.The original documents marked as Exs.A1 to A8 in O.S.No.6757 of 2014 before the VI Assistant City Civil Court, Chennai, shall be returned to the petitioner, after substituting the same by certified copies. The petitioner shall also file an affidavit of undertaking to the effect that he will not encumber the properties and he will take steps to get the sale deed in favour of the legal heirs of the other respondents from the Tamil Nadu Slum Clearance Board. The Civil Revision Petition is ordered accordingly.

21.10.2024

Index: Yes/No
raa

To

1. VI Assistant Judge,
City Civil Court, Chennai.
2. The Section Officer,
VR Section, High Court,
Madras.



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A.D.JAGADISH CHANDIRA, J.

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