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C.R.P. (PD) No.1721

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P. (PD) No.1721 of 2024
and C.M.P.No.9065 of 2024**

Ravi

... Petitioner/Plaintiff

Vs.

1.Jayalakshmi
2.Rajendiran
3.Selvamoorthi
4.Chandra
5.Mani
6.Devendiran

... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.03.2024 in I.A.No.231 of 2024 in O.S.No.436 of 2001 on the file of the Additional District Munsif, Vellore.

For the Petitioner : Mr.A.Gouthaman

For the Respondents : Mr.R.Vasudevan
for R2

For RR1, 3, 4, 5 and 6 – No appearance

ORDER

This Civil Revision Petition arises against the order of the learned Additional District Munsif, Vellore, in I.A.No.231 of 2024 in O.S.No.436 of 2001 dated 15.03.2024.



2. The Civil Revision Petitioner is the plaintiff. He presented the suit in O.S.No.436 of 2001 seeking the relief of declaration that the sale deed dated 10.08.1996 executed by the 6th defendant in favour of the 5th defendant as null and void and for partition of the property into 5 equal shares and for allotment of one share to the plaintiff and for consequential reliefs.

3. The facts leading to the suit are that the father of the plaintiff, one Varadharaj obtained the property by way of partition with his brother, Annamalai. The said Varadharaj died intestate in the year 1993, leaving behind the plaintiff and the defendants 1 to 4 as his legal heirs. The plaint proceeds that the defendants 1 to 4 had executed a power of attorney in favour of the 6th defendant, who in turn sold the property in favour of the 5th defendant.

4. During the time when the power of attorney was executed, the plaintiff was not in station. He was away and doing military service. He would plead that his thumb impression had been forged by the 6th defendant and on that basis he had executed the sale deed in favour of the 5th defendant. In other words, the simple plea of the plaintiff is that he is not a party to the power of attorney and therefore, the sale deed that has been executed in favour of the 5th defendant by the 6th defendant does not bind him.



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5. On entering appearance, the 5th defendant filed his written statement, contesting the averments of the plaintiff. The 5th defendant also presented a suit in O.S.No.612 of 2002 seeking a declaration of his title and a permanent injunction.

6. By an order of this Court, both the suits were tried jointly. Evidence was concluded in the suit, and the matter was posted for arguments. At that stage, a new counsel who appeared for the plaintiff came to see that the prayer that had been sought by the plaintiff was defective and also that there was some typographical error in the Survey Number in the schedule. Hence, he filed an application for amendment seeking declaration of the title and to correct the Survey Number. The said application was received as I.A.No.231 of 2024. The 5th defendant filed a counter to the said application pleading that he had handed over the possession of the property by execution of a settlement deed and that the amendment would change the nature and character of the suit.

7. On the basis of these counter and affidavits, the learned Judge considered the application. He came to a conclusion that the change made is not only in the Survey Number, but also to the extent and that the plaintiff is trying to fill up the lacunae with respect to the possession of the 5th defendant. On the basis of these



findings, the learned Judge dismissed the application. Hence the revision.

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8. Heard, Mr.A.Gouthaman, for the Civil Revision Petitioner and Mr.R.Vasudevan for the 2nd respondent. Counsels on both sides reiterated the arguments that had been made before the Court below.

9. I have carefully considered the arguments of both sides and gone through the records.

10. There is no dispute with the relationship between the parties. The plaintiff is the son of one Varadharaj. The 1st defendant is the wife of Varadharaj. Defendants 2 to 4 are the siblings of the plaintiff, through the 1st defendant. The 5th defendant is the purchaser of the joint family property and the 6th defendant is the alleged power of attorney of the defendants 1 to 4 and the plaintiff.

11. The plaintiff pleads that the sale deed that has been executed in favour of the 5th defendant is not binding on him because he had never executed a power of attorney in favour of the 6th defendant. This is clear from the reading of the paragraph No.2 of the plaint, wherein he states that the sale is not valid or binding on him to the extent of his 1/5th share. Nonetheless, he has sought higher relief in the suit for a



declaration that the entire sale is null and void.

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12. Suffice it to say that for disposal of this revision, if the plaintiff proves that he had not executed the power of attorney, then obviously a document that states that a person who executed the sale deed as his agent would not be binding on the plaintiff. This is a matter for trial. The learned Judge obviously would deal with the issue, since it is an issue in the suit.

13. In so far as the amendment is concerned, the plaintiff seeks a relief of declaration of his title and for recovery of possession. He also seeks for partition. A preliminary decree passed by the Court below is in the nature of a declaration. It declares the right or share of the parties in the suit property. When the plaintiff admits that, apart from him, there are four other persons who are entitled to the property, then obviously he will not be entitled to the relief of declaration. He has rightly sought the relief of partition. He should be happy, if the Court decrees that portion of the suit.

14. If he were to change the relief of the suit from partition to declaration, as rightly pointed out by the learned Additional District Munsif, he is changing the cause of action of the suit. The very pleading of the plaintiff is that his share has



been alienated by the 6th defendant in favour of the 5th defendant, when at no point of time, he had authorised the 6th defendant to execute the sale deed. Hence the relief of declaration of title cannot be entertained in the present suit. If granted, it will amount to a change in the cause of action. Thus, with respect to the 2nd prayer, in so far as that portion of the impugned order is concerned, it only requires an order of confirmation and it is accordingly confirmed. The amendment with respect to the prayers Nos.I, II and III stands rejected.

15. In so far as the prayer in IV is concerned, a comparison between the schedule of property in item No.5 and with respect to their amendment in IV is concerned, I do not find any fundamental change other than the fact that the plaintiff has added half share in the Well situated in Survey No.107/5. This mistake is a typographical error in the Survey Number. It is sought to be rectified by way of this amendment.

16. If the plaintiff proves that he has not executed the power of attorney, obviously, he will be entitled to the relief of partition that he seeks, for which it includes all the items of the property. By correcting the typographical error and inclusion of the property, the plaintiff is not changing the cause of action with respect to the suit for partition.



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17. Therefore, I am inclined to consider the amendment application in so far as the proposed amendment at IV is concerned. The order of the learned Judge with respect to that portion stands set aside. The application in I.A.No.231 of 2024 will stand allowed with respect to the amendment in the Survey Number and inclusion of a half share in the Well portion alone. In all other aspects, it stands dismissed. Furthermore, both parties agreed that evidence has been completed and the suit is at the stage of Judgment. The parties, having let in evidence to their hearts content by virtue of this amendment, they will not be entitled to reopen the evidence and let in fresh evidence in the suit. All that the plaintiff is entitled to do by virtue of this order is to file an amended plaint with respect to the amendment in prayer No.IV. It is made clear neither the plaintiff nor the defendants will be entitled to let in evidence.

18. In the result, this Civil Revision Petition stands partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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21.08.2024

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

Neutral citation : Yes / No



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V.LAKSHMINARAYANAN, J.,
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To

The Additional District Munsif, Vellore.

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and C.M.P.No.9065 of 2024**

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