



C.R.P.No.2289 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2289 of 2021

and

C.M.P.No.17304 of 2021

S.P.S.Anandan

... Petitioner

Vs.

1.Mr.S.Ramesh
2.S.A.Balakrishnan
3.R.Shanthi
4.G.Krishnan
5.S.Suresh
6.G.Kalpana

7. The District Collector
The Collectorate,
Salem-1

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to strike of the suit proceedings in O.S.No.141 of 2015 pending on the file of the II Additional District Court, Salem.

For Petitioner : Mr.K.S.Balaji

For respondent 1 : M/s.A.Rajesh Kanna

For respondent 2 : Died



C.R.P.No.2289 of 2021

For respondent 3 : M/s.Prakash Paul
For respondent 4,5 &6 : Not ready in notice

For respondent 7 : Mr.C.Sathish
Government Advocate

ORDER

The Civil Revision Petition is filed seeking to strike off the plaint in O.S.No.141 of 2015, on the file of learned II Additional District Judge, Salem, filed by the 1st respondent herein.

2. The 1st respondent herein filed a suit seeking declaration that suit property absolutely belonged to him and defendants 4 and 5 in the suit. The 1st respondent also sought for the relief of setting aside the sale deeds dated 07.12.1998, 03.11.2000 and 12.04.2001 stands in the name of 1st defendant, 2nd defendant and 3rd defendant respectively. The 1st respondent also sought for a relief of possession from the 3rd defendant. The petitioner herein, who was third party to the suit filed an impleading application and got himself impleaded as 7th defendant in the suit.

3. It is the case of the petitioner that item 1 in B schedule property was



sold to the petitioner by 1st respondent and respondents 5 and 6 (plaintiff and defendants 4 and 5) under registered sale deed dated 03.11.2000 in favour of petitioner's father Sukumar. His father settled the property in his favour on 05.07.2004. Thus, it is the case of the petitioner that one of the item of the suit property was already sold by the plaintiff and defendants 4 and 5 in his favour and suit for declaration of title in so far as that item was not maintainable. It is also stated by the petitioner that plaintiff and defendants 4 and 5 got title to the suit property under the Will executed by one Sambasiva Reddiyar, the original owner of the property on 16.06.1998. It is further stated by the petitioner that the 1st respondent and respondents 5 and 6 created another Will allegedly executed by Sambasiva Reddiyar dated 03.11.2000 and filed succession original petition in SOP.No.3 of 2012 on the file of Sub-Court, Salem and the same was dismissed by holding the 2nd Will relied on by the 1st respondent and respondents 5 and 6 dated 03.11.2000 was not a genuine document. Suppressing the said finding in succession original petition, the 1st respondent has filed the present suit claiming right under the Will dated 03.11.2000 which was negated by the Court earlier.



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C.R.P.No.2289 of 2021



4. As per the case of the petitioner herein, he is claiming right only in respect of item 1 of the B schedule property. Further, it is the case of the petitioner that 2nd prayer in the plaint regarding the declaration of title would affect his rights. However, there are other prayers in the plaint regarding sale deeds in favour of defendants 1, 2 and 3.

5. It is settled law that plaint cannot be rejected only in part or in respect of one of the prayer or in respect of one of the subject matter. In such circumstance, I am unable to accept the contentions raised by the learned counsel for the petitioner and reject the plaint in its entirety. If it is the case of the petitioner that he purchased the suit property from the 1st respondent and respondents 5 and 6, it is for him to file written statement raising all his defences in the suit. It is also open to the petitioner to file an application for rejection of the plaint raising all the points raised by him in this revision if so, advised.



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C.R.P.No.2289 of 2024

6. When the petitioner has got effective remedy before the regular Civil Court, in view of the law laid down by the Hon'ble Apex Court in *Virudhunagar Nadargal Dharma Paripalana Shabha Vs Tuticorin Educational Society reported in MANU/SC/1365/2019*, I am not inclined to exercise supervisory jurisdiction under Article 227 of Constitution of India. Accordingly, the Civil Revision Petition stands dismissed with the above said liberty. No costs.

08.03.2024

Index : Yes / No
Internet : Yes / No
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To

The learned II Additional District, Judge Salem.

5/7



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C.R.P.No.2289 of 2021.



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C.R.P.No.2289 of 2021

S.SOUNTHAR, J.

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C.R.P.No.2289 of 2021 and
C.M.P.No.17304 of 2021

08.03.2024