



C.R.P.No.2895 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2895 of 2024 and
C.M.P.No.15408 of 2024

1.A.Shanthi
2.I.Robbin
3.I.Jayaseeli

... Petitioners

Vs.

1.V.Devi
2.V.Bhavani
3.Ajit Raj Kankriya
4.Kuldeep Kankriya

5.The Inspector General of Registration,
Santhome High Road, Chennai 600 028.

6.The Sub Registrar,
Sub Registrar office at Purasawalkam,
Chennai.

7.The Tahsildar (Revenue),
Purasawalkam Taluk,
Chennai-11.

8.The Commissioner (Revenue),
Corporation of Chennai,
Chennai-3.

... Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 02.07.2024 passed by the XIX Additional Judge, City Civil Court, Chennai dismissing I.A.No.6 of 2023 in O.S.No.3888 of 2022, allow this civil revision petition.

For Petitioner	:	Mr.N.V.M.Margandeyan
For R1 & R2	:	Ms.P.C.Geethammal
For R5 to R8	:	Mr.T.Arun Kumar, Additional Government Pleader

ORDER

The petitioners/third parties to the suit in O.S.No.3888 of 2022 filed a petition under Order 1 Rule 10 of C.P.C before the learned XIX Additional Judge, XIX Additional City Civil Court, Chennai in I.A.No.6 of 2023 in O.S.No.3888 of 2022 to get impleaded themselves as defendants and the same was dismissed by order, dated 02.07.2024. Against which, the present civil revision petition has been filed.

2.The learned counsel for the petitioners submitted that the petitioners who are third parties to the suit in O.S.No.3888 of 2022, have filed suit in O.S.No.8333 of 2022 which is pending before the learned IV Assistant Judge, City Civil Court, Chennai for permanent injunction and declaration



against the respondents 1 and 2 herein (plaintiffs in O.S.No.3888 of 2022),

respondents 3 & 4 (defendants 1 and 2 in O.S.No.3888 of 2022) and

D.Vijayakumar and D.Velumani who are spouses of the respondents 1 and

2. The petitioners finding collusion between the respondents 1 to 4 in the

present suit filed a petition to get impleaded themselves as party defendants.

The case of the petitioners is that sale deed in document No.4164 of 2018

executed on the strength of fraudulent settlement deed in document No.3734

of 2013 executed by the spouses of the respondents 1 and 2 viz.,

D.Vijayakumar and D.Velumani. The sale deed in document No.4164 of

2018, settlement deed in document No.3734 of 2013 and power of attorney

document No.3741 of 2013 are under challenge. The learned counsel for

the petitioners submitted that the suit property was originally allotted to one

Veerasamy who passed away leaving behind two sons Ponnusamy and

Kannan. The 1st petitioner is grandchild and 2nd and 3rd petitioners are great

grandchildren of Ponnusamy. The said Kannan left behind five children.

One among the five children is Dhanapal who is the father said

D.Vijayakumar and D.Velumani and father-in-laws of the respondents 1 and

2.



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3.He further submitted that in the suit filed by the petitioners in O.S.No.8333 of 2022, the respondents 3 and 4 herein (defendants 5 and 6 in O.S.No.8333 of 2022) disclosed the fact that the respondents 1 and 2 herein filed suit in O.S.No.3888 of 2022 seeking direction directing the respondents 3 and 4 herein to pay the balance sale consideration of Rs.85,00,000/- as per the sale deed. On coming to know about the same, since the petitioners are necessary parties to the suit in O.S.No.3888 of 2022, filed petition under Section Order 1 Rule X of C.P.C to get impleaded themselves as parties. The Lower Court failed to see that the sale deed which is the subject matter of the suit in O.S.No.3888 of 2022, is also under challenge in the suit filed by the petitioners in O.S.No.8333 of 2022. The respondents 1 to 4 herein attempted to seek a stamp of approval from competent Court on a sham litigation. The respondents 1 to 4 acted in collusion suppressed the real facts. The Lower Court failed to appreciate the fact that the spouses of the respondents 1 and 2 instead of confining their right as per their share over the suit property, had executed a settlement deed for the entire property in favour of the respondents 1 and 2. In turn, on the strength of the power of attorney in document No,3741 of



2013 executed by the respondents 1 and 2 in favour of the 3rd respondent, the 3rd respondent sold the suit property to his son/4th respondent by sale deed in document No.4164 of 2018 depriving the petitioners' lawful shares over the suit property. If the suit is decreed without the presence of the petitioners, the respondents 1 and 2 would walk away with the entire money including the share of the petitioners and that would cause irreparable loss and damage. The decision relied upon by the respondents before the Lower Court in “*Gurmit Singh Bhatia v. Kiran Kant Tobinson and others* reported in (2020) 13 Supreme Court Cases 773” is not applicable to the facts of the present case.

4.The Lower Court wrongly applied the principle and coming to a finding that the suit in O.S.No.3888 of 2022 has been filed by the respondents 1 and 2 against the respondents 3 and 4 for recovery of balance sale consideration. Now the property sold has been taken possession by the 4th respondent and the respondents 1 and 2/plaintiffs being *Dominus litus* in O.S.No.3888 of 2022, they have right to choose their opponent. Further, the pendency of the suit in O.S.No.8333 of 2022 filed by the petitioners herein



against the respondents 1 to 4 are totally irrelevant so far as the present suit is concerned. By impleading the petitioners, a new cause of action to the suit would arise and it is not desirable. This finding of the lower Court is on a wrong appreciation of the facts and law.

5.He further submitted that by impleading the petitioners, scope of specific performance suit will not get enlarged for any other relief. The specific case of the petitioners is that the respondents 1 & 2 filed collusive suit to get approval of the Court for sham transaction depriving the petitioners' right. Hence, he prays for setting aside the impugned order.

6.The learned counsel for the respondents 1 and 2 filed typed set and counter submitting that the suit property is allotted to Dhanapal and it was not devolved to Dhanapal from Veerasamy or Kannan. The learned counsel for the respondents 1 and 2 produced the notice issued by the Madras Collector to Dhanapal calling payment of arrears, Auction notice for non payment of tax, property tax receipt issued by the Corporation of Madras to Dhanapal, Water and Sewage Tax receipts from the year 1978. He further



submitted that the respondents 1 and 2 filed suit against the respondents 3 and 4 in O.S.No.8333 of 2022 seeking balance sale consideration of Rs.85,00,000/-. The suit property in O.S.No.8333 of 2022 is situated at old door No.2, new door No.3, Flowers Road, Purasawalkam which belongs to the respondents 1 and 2' father-in-law Dhanapal who acquired and inherited the same from his ancestors. The said Dhanapal was in absolute possession and enjoyment of the suit property during his lifetime. He died intestate on 14.06.1992 leaving behind his sons D.Vijayakumar and D.Velumani as legal heirs. Thereafter, the said D.Vijayakumar and D.Velumani were in possession and enjoyment of equal share in the suit property. Both of them settled their property in favour of their spouses viz., the respondents 1 and 2 herein by way of deed of settlement, dated 07.08.2013 in document No.3734 of 2013. Ever since the date of settlement, the respondents 1 and 2 herein are in possession and enjoyment of the property since the respondents 1 and 2 facing difficulty to manage the property jointly and executed power of attorney in favour of the 3rd respondent on 20.09.2013 in document No.3741 of 2013. Five years nothing had happened. In the year 2022, when the respondents 1 and 2 applied for encumbrance certificate, to their shock



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found that the 3rd respondent using power of attorney sold the property to his son/4th respondent on 12.07.2018 by sale deed in document No.4164 of 2018. In the sale deed executed, the consideration fixed shown as Rs.1,04,95,500/-, the 3rd respondent paid Rs.19,00,000/- cash and balance not paid, hence, for recovery of balance amount of Rs.85,00,000/-, the suit in O.S.No.3888 of 2022 filed which is at the advance stage. Coming to know about the filing of the suit in O.S.No.3888 of 2022, the petitioners herein filed suit with ulterior motive in O.S.No.8333 of 2022 before the IV Assistant Judge, City Civil Court, Chennai almost six months thereof during November 2022 claiming that as though the petitioners are in enjoyment of the property and sought injunction against the defendants 1 to 4. In the suit in O.S.No.3888 of 2022, further prohibitory orders sought and also sought declaration that the settlement deed in document No.3734 of 2013, the power of attorney document No.3741 of 2013 and sale deed in document No.4164 of 2018 all to be null and void not binding on the petitioners. The petitioners having filed the suit already in O.S.No.8333 of 2022, it is for them to pursue their right and obtain a decree if they are so entitled and not to stall the progress of the suit in O.S.No.3888 of 2022 by getting



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themselves impleaded and changing the nature of the suit. The Lower Court by a well reasoned order considering all these aspects found that as plaintiffs the respondents 1 and 2 are *dominus litus*, they cannot be compelled to implead the petitioners as defendants and rightly dismissed the impleading petition. Hence, he prays for dismissal of the revision.

7.As regards the respondents 3 and 4 herein are concerned, in the impugned order, the respondents 3 and 4 admitted about pendency of the suit filed by the petitioners in O.S.No.8333 of 2022 and they are defending the same. They contended that it is for the Court to decide whether the petitioners are necessary parties or not.

8.Mr.T.Arun Kumar, learned Additional Government Pleader takes notice for the respondents 5 to 8 who are formal parties.

9.This Court considered the rival submissions and perused the materials available on record.



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10.The petitioners filed I.A.No.6 of 2023 in a suit filed by the respondents 1 and 2 against the respondents 3 and 4 and other respondents viz., the official respondents. The petitioners filed the suit in O.S.No.8333 of 2022 before the learned IV Assistant Judge, City Civil Court, Chennai against the respondents 1 and 2 herein/defendants 3 & 4, respondents 3 & 4/defendants 5 & 6 and spouses of respondents 1 and 2/defendants 1 and 2 seeking permanent injunction not to disturb the peaceful possession and enjoyment of the suit property situated at old door No.2, new door No.3, Flowers Road, Purasawalkam, Chennai. It is to be noted that the same suit property is shown in O.S.No.3888 of 2022 with other declaratory relief to declare the document Nos.3734 & 3741 of 2013 and 4164 of 2018 as null and void not binding on the respondents 1 and 2 herein. Though no relief claimed by the plaintiffs in O.S.No.3888 of 2022 against the petitioners herein, the petitioners' have right to seek relief against the respondents 1 to 4 who are plaintiffs and defendants 1 and 2 in O.S.No.3888 of 2022 since the schedule property in both the suits in O.S.Nos.3888 of 2022 and O.S.No.8333 of 2022 are one and the same. Hence, the petitioners are necessary parties and no effective decree could be passed in the absence of



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the petitioners. Further the right of the petitioners gets affected.

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11.In view of the above, this Court comes to the conclusion that to avoid multiplicity of proceedings, the petitioners are to be impleaded as parties in O.S.No.3888 of 2022. Hence, the impugned order, dated 02.07.2024 in I.A.No.6 of 2023 in O.S.No.3888 of 2022 passed by the learned XIX Additional Judge, XIX Additional City Civil Court, Chennai is set aside.

12.The learned XIX Additional Judge, XIX Additional City Civil Court, Chennai is directed to implead the petitioners in O.S.No.3888 of 2022 forthwith. Accordingly, this civil revision petition stands allowed. Consequently, connected civil miscellaneous petition is closed. No costs.

01.08.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes

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M.NIRMAL KUMAR, J.

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To

The XIX Additional City Civil Court,
Chennai.

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