



C.R.P.No.3423 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3423 of 2024 &  
C.M.P.No.18532 of 2024

Lakshmi : Petitioner

versus

T.Kamala : Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.233 of 2024 in O.S.No.212 of 2023 dated 06.07.2024 on the file of the learned Additional District Munsif of Tiruppur.

For Petitioner : Mr.N.Mayilsamy

ORDER

This civil revision petition arises against the order of the learned Additional District Munsif, Tiruppur in I.A.No.233 of 2024 in O.S.No.212



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of 2023.

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2. O.S.No.212 of 2023 is a suit for permanent injunction restraining the defendant from putting up any construction over the suit property and for mandatory injunction to pull down the compound wall that has been constructed till lintel level.

3. The relationship between the parties is that the plaintiff is the younger sister and the defendant is the elder sister. The plaintiff pleads that she secured the property by virtue of a settlement deed that had been executed on 30.11.1989 by her husband in her favour. Thereafter, she put the defendant in possession of the property as a licensee. Pleading that, without authorisation, the defendant has started to put up construction over the same, the plaintiff came forth with the suit.

4. On service of summons, the defendant entered appearance and took out an application for rejection of plaint in I.A.No.233 of 2024.

5. After receipt of a counter, the learned Judge went on to dismiss the



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application. Hence the revision.

6. I have heard Mr.N.Mayilsamy for the civil revision petitioner.

7. Mr.N.Mayilsamy would submit that as per the settlement deed dated 30.11.1989 registered in document No.2401 of 1989, the husband had settled the property in favour of his wife, but had retained life interest. Therefore, he submitted that the possession has not been transferred to the plaintiff and that the document is a “Will”. Hence, she cannot maintain a suit for permanent injunction.

8. Mr.N.Mayilsamy would also invite my attention to the paragraph No.4 of the counter filed by the plaintiff to the application for rejection of plaint, wherein the plaintiff had pleaded that she is acting as guardian for her husband on account of his old age. He would submit that these two circumstances should constrain the Court to reject the plaint.

9. I considered both the submissions of Mr.N.Mayilsamy.



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10. Insofar as the plea of rejection of plaint is concerned, I only have to go through the plaint and come to a conclusion whether the cause of action is made out or it is barred by any of the provisions under Order VII Rule 11 (a) to (d).

11. A reading of the settlement deed shows that the property had been settled in favour of the plaintiff and only life interest was retained by the husband. This does not mean that the document becomes a “Will”. The document continues to be one of settlement, which would come into force immediately upon acceptance by the plaintiff. Whether it is a Will or a settlement deed, or whether it is a restricted covenant will have to be gone into only at the time of trial.

12. Suffice it to say, a reading of the document would show that the settlement deed had come into force. I am giving this finding only in a prima facie view, accepting the document to be true. I do not want the court to be swayed by the findings given in this revision at the time of final



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13. Insofar as the plea that the averments made in paragraph 4 of the counter is concerned, it has been filed only in order to defeat the petition that had been filed for rejection of plaint. The plaint and the documents have to be read for the purpose of rejection and not the averments made in the counter. In fact, a petition for rejection of plaint does not require a counter. The court should go through the plaint and documents to conclude if it is barred.

14. In the light of the above discussion, I do not find any mistake in the order of the learned trial judge. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

**28.08.2024**

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Index : Yes/No

Speaking Order/Non-speaking order

Neutral Citation : Yes/No

To

The Additional District Munsif of  
Tiruppur.



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**V.LAKSHMINARAYANAN, J.**

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