



C.R.P.(PD)No.2992 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2992 of 2023

and

C.M.P.No.18476 of 2023

N.Venkatesan

.. Petitioner

Vs.

1.R.Sundara Babu

2.Radha Bai

3.Prema Kumari

4.Thenmozhi

5.Rajakantham

6.Thulasi

7.K.Narayanasamy

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 05.07.2023, made in I.A.No.1 of 2022 in O.S.No.2784 of 2007 pending on the file of the II Additional City Civil Court at Chennai.



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For Petitioner : Mr.R.Ashraf Khan

For Respondents : Mr.A.Lakshminarasimhan

ORDER

The present Civil Revision Petition arises at the instance of the 2nd defendant.

2. O.S.No.2784 of 2007 is a suit for partition and for separate possession.

3. For the sake of convenience, the parties will be referred to as per their rank in the suit.

4. Each of the plaintiffs claimed 1/8th share in the suit schedule mentioned properties. In the said suit, one K.Narayanasamy/the father was arrayed as the 1st defendant and one N.Venkatesan/the civil revision petitioner was arrayed as the 2nd defendant.



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5. The claim of the plaintiffs is that the suit schedule mentioned properties were purchased by the said K.Narayanasamy from and out of the funds that he obtained as compensation in the acquisition of an ancestral property to create the Indian Institute of Technology at Madras.

6. Prior to the suit, the said K.Narayanasamy had settled the property in favour of the 2nd defendant. Subsequently, K.Narayanasamy cancelled the said document. This constrained the 2nd defendant to file a suit in O.S.No.8887 of 2006 on the file of the II Assistant City Civil Court at Madras for declaration that the cancellation of the settlement deed is null and void.

7. As a counter blast, K.Narayanasamy had filed a suit in O.S.No.2780 of 2007 seeking an order of permanent injunction against the 2nd defendant from interfering with his possession. The suits in O.S.Nos.2780 of 2007 and 8887 of 2006 were tried together. By a judgment and decree passed by the City Civil Court, the suit for declaration that the cancellation of the settlement deed is null and void stood decreed, and the suit filed by K.Narayanasamy stood dismissed.



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8. Having succeeded in those proceedings, the 2nd defendant was emboldened to file an application to dismiss the partition suit as devoid of cause of action. This application was taken on file as I.A.No.1 of 2022. By an order dated 05.07.2023, the application came to be dismissed, against which the present Civil Revision Petition has been presented before this Court.

9. Heard Mr.R.Ashraf Khan, appearing on behalf of the petitioner and Mr.A.Lakshminarasimhan, appearing on behalf of the respondents.

10. Mr.R.Ashraf Khan would argue that the plaintiffs in the present suit had deposed as witnesses in the previous suit, namely O.S.No.8887 of 2006, and had pleaded that this property is a self acquired property of the 1st defendant. He would state on the basis of this statement, the cause of action of the present suit vanishes. He would also plead that this suit for partition was dismissed for default and had been restored after nearly a decade, and this would show that the intention of the plaintiffs is only to keep the pot boiling, and not see the end of trial. He would state that the City Civil Court



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had decreed the suit in O.S.No.8887 of 2006. Therefore, this suit has lost its substratum, and deserves to be dismissed as infructuous.

11. Mr.A.Lakshminarasimhan would contend that it is the specific case of the plaintiffs that the property is an ancestral property, and therefore, the cancellation of the settlement deed executed by the 1st defendant in favour of the 2nd defendant would matter not to the facts of this case. The suit continues to have a cause of action and therefore, he requests that the revision be dismissed.

12. I have carefully considered the arguments on either side and I have carefully perused the materials available on record.

13. The point to be considered is whether the suit in O.S.No.2784 of 2007 has lost its substratum for it not to proceed for trial. In the judgment of ***Shipping Corporation of India Limited vs. Machado Brothers & Others [(2004) 11 SCC 168]***, the Supreme Court, in clear and categorical terms, had held that if the cause of action for the suit vanishes, the Court has the power under Section 151 of the Code of Civil Procedure to dismiss the suit



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as infructuous. For me to come to a conclusion that the suit has lost the cause of action, I necessarily would have to see the plaint.

14. A perusal of the plaint shows that the plaintiffs, who are the sons of the 1st defendant and the siblings of the 2nd defendant, claim that the family of the 1st defendant had vast extents of properties which had been acquired by the Government for the creation of Indian Institute of Technology at Madras. The plea is the properties, which had been acquired, are ancestral properties. In view of the acquisition of the ancestral properties, the Government allotted the suit properties in favour of the 1st defendant. According to the plaintiffs, since the property was given in view of acquisition of the ancestral property, any allotment or accretion, which arises out of the said acquisition, would also have to be treated as a joint family property. If it is a joint family property, each of the plaintiffs will have a share by their birth and not by the death of the 1st defendant.

15. The settlement deed executed by the father in favour of one of the co-parceners for the entire extent, can at best, bind only his estate. The father has no right to alienate the interest of the other co-parceners in favour



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of one co-parcener by way of a settlement deed. The effect of the judgment and decree passed in O.S.No.8887 of 2006 would only bind the 1st defendant and not the plaintiffs. This is because, the plaintiffs were not even parties to the suit. It was the suit *inter se* between the 1st defendant and the 2nd defendant.

16. Mr.R.Ashraf Khan would want me to hold that the decree granted *inter se* the defendants would be binding on the plaintiffs. I am not willing to fall prey to such fantastic proposition of law. The suit in O.S.No.8887 of 2006 is not a suit in representative capacity for it to be binding on all the other interested parties. Infact, the claim of the plaintiffs herein is against the interest of the 1st defendant. Therefore, by no stretch of imagination, there is any interest in common between the 1st defendant and the plaintiffs as each of the co-parcener, if the plea of the plaintiffs proves to be correct, would have an independent right over the property.

17. Now turning to the plea of Mr.R.Ashraf Khan that since R.Sundara Babu/the 1st plaintiff had entered the witness box and supported the case of the sole defendant/K.Narayanasamy in O.S.No.8887 of 2006 is



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concerned, it is the statement made for the purpose of disposal of that suit.

Infact, even a statement has made as an admission during the course of the present suit, it can always be explained in terms of the Indian Evidence Act, 1872. If it is a statement made by a person during the course of an other proceeding, the appropriate procedure would be to confront the 1st plaintiff regarding his statement in the previous suit when he enters the witness box in this suit and thereafter, mark the previous deposition as evidence in this suit. If the 1st plaintiff admits to such a plea, the other plaintiffs are still entitled to agitate as regards the correctness or otherwise of the statement made by him in the previous suit.

18. The provisions of the Indian Evidence Act make sufficient room for the civil revision petitioner to confront the 1st plaintiff. On the ground that the 1st plaintiff has made a statement with respect to the suit property, which is totally unconnected with the cause of action in the present suit, and hence, this suit must be dismissed is too fantastic proposition for me to accept.



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19. In the light of the above discussion, I find absolutely no merits in the revision. Therefore, the order passed by the learned I Additional Judge (FAC), II Additional City Civil Court at Chennai in I.A.No.1 of 2022 in O.S.No.2784 of 2007, dated 05.07.2023, is confirmed. Accordingly, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petition is closed.

22.07.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The learned II Additional City Civil Judge,
Chennai

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and

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