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A NO. 4427



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-12-2024

CORAM

THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

A NO. 4427 of 2024

AND

TOS NO. 28 OF 2010

Deva Jawahar

14/13, 38th Dr.Ambedkar Street, GKN Colony, Chennai 600 082.

Applicant(s)

Vs

M.R.Kandasamy (Deceased) 1.K.Karthikeyan and another

S/o.Late Ramakrishnan, Mayurnathapuram, Nenmeni Post, Sattur Taluk, Virudhu
Nagar District. and another

Respondent(s)

For Applicant(s):

M/s.V.Arun

Dr.S.Ambigaidass

V.Nandhini

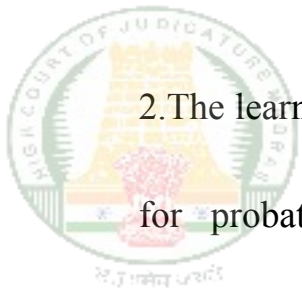
For Respondent(s):

R1 - K.Karthikeyan

R1 Name Printed As Per Order Dt:03/09/2024

ORDER

This application has been filed to implead the applicant as second defendant in the pending TOS 28 of 2010 to protect his interest and in the interest of all parties concerned.



2.The learned counsel for the applicant submits that the plaintiff filed the afore
for probaton of alleged unregistered WILL executed by the deceased V.R.

Ramakrishnan dated 03.02.1997. The first item of the property mentioned in the
schedule of property of the said alleged WILL is purchased by the applicant by way of
registered sale deed dated 08.07.2013 from the vendors. In fact, the first item of
schedule of property in the said WILL was originally purchased by the deceased from
the Tamil Nadu Housing Board by way of registered sale deed bearing No. 1964 of
1992 on the file of Ambathur SRO, Chennai in his own name by his own earnings.
The plaintiff as he served Tahsildar, he tactfully obtained legal heir certificate at Fort-
Tondiarpet Taluk Office, Chennai dated 16.07.1997 as his son/second plaintiff is one of
the legal heirs as he was adopted son of the deceased along with the first defendant who
is wife of the deceased. In fact, the Tahsildar, Fort-Tondairpet Taluk, Chennai has no
jurisdiction to issue such legal heir certificate for a person died beyond his jurisdiction.

3. It has been further submitted that even in the WP 25693 of 2023, the second plaintiff
filed the same sitting at USA as permanent resident to challenge the applicant's
building permission where also the plaintiff unable to state his time and date of
adoption which was duly observed by the Hon'ble Division Bench in its order dated



26.06.2024. Originally the deceased died intestate, the first defendant became (

properties by inheritance which were purchased in the name of the deceased.

Accordingly, the first item of the alleged WILL was settled on 30.11.2012 to her sister

by way of registered settlement deed bearing No.11036 of 2012 on the file of Sattur

SRO by the first defendant as she was the only legal heir of the deceased. The first

defendant's sister settled that property to her son on 30.11.2012 in Doc.No.11037 of

2012 on the file of Sattur SRO. On verification of revenue records of the defendants

and title deeds of the first item of the schedule property of WILL and Encumbrance

certificate and verification mother deeds at SRO, the applicant came to know, there is

no encumbrance over the said property, hence the applicant purchased the property on

08.07.2013 by way of registered sale deed in Doc. No. 3259 of 2013, on the file of

SRO, Konnur from the vendor and the first defendant also witnessed the same before

the SRO, Konnur, Chennai. Subsequently the revenue records such as Patta is

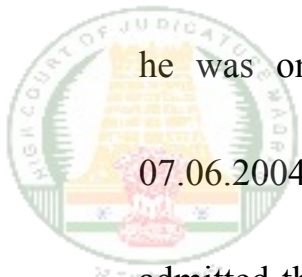
transferred in the petitioner's name.

4. The learned counsel for the applicant further submits that in judgment of in O.S No.

50 of 2017 passed by the District Judge, Sattur on 20.12.2023 observed and rejected the

claim of adopted son as he did not let evidence nor tried to produce any evidence to

establish as he was adopted son. In fact, the sale deed executed by the first plaintiff as



he was only legal heir was declared invalid in Doc. No. 2517 of 200

07.06.2004. Further the second plaintiff filed swearing affidavit dated 05.02.2024

admitted that his father executed sale deed dated 07.06.2004 which will not affect his

right of adopted son of the deceased V.R.Ramakrishnan. The first defendant stoutly and

continuously stated even in the written statement in the aforesaid suit. Further, in cross

examination of the first defendant, she was not challenged the alleged adoption and in

the Counter itself, the 1st respondent admits himself that the Applicant herein is a

bonafide purchaser for the value and the applicant is the necessary and proper party for

effectively and completely to adjudicate upon and settle all the questions involved in

the suit. It is therefore prayed that this Hon'ble Court may be pleased to implead me as

second defendant in the pending TOS 28 of 2010 to protect my interest and in the

interest of all parties concerned and oblige.

5. On the other hand, the learned counsel for the respondents submits that the Applicant

belongs to Political party and used to buy the litigation property at throw away prices

and claim title over the said property. The Applicant was very much aware that the

subject matter of the property purchased by him was bequeathed to the 1st respondent

under the Will and moreover the order passed in I.A. No. 1091 and 1092 of 2019 in



O.S. No. 556 of 2009 on the file of Additional District Munsif Court, Alan

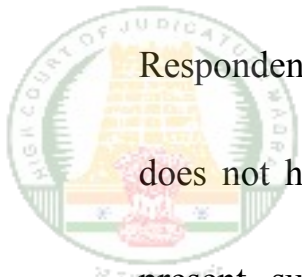


Order dated 03.06.2010 has been registered by the 2nd Respondent themselves in order to bring the notice to everyone that no one should deal with the Executor of the Will or

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1 Respondent herein. If the Applicant would have applied for the Encumbrance Certificate or perused the Encumbrance Certificate it clearly reflects that there is a dispute pending before the Hon'ble High Court in T.O.S. No. 28 of 2010.

6. It has been further submitted that according to the Applicant, he had purchased one of the schedule property covered under the Will on 08.07.2013 by way of Sale Deed bearing Document No. 3259 of 2013 on the file of Sub-Registrar, Konnur. Since then the Applicant was very much aware the T.O.S. is pending before this Hon'ble Court. The Applicant has not chosen to file impleading application within the statutory period of 3 years, the present application for impleading is hopelessly barred by limitation. If at all the Applicant wants to support the 2nd Respondent, he can support the 2nd Respondent only from outside the court or by examining himself as a witness to the suit. Now the evidence of the Plaintiff was concluded, thereafter the Defendants were examined and cross examined and now the suit is posted for arguments. Whatever the rights or interest are the so called title acquired by the Applicant only from the 2nd



Respondent, she already contested the suit by engaging the Counsel. The A

does not have Caveatable interest or claim more than the 2nd Respondent as in the

present suit. In the absence of compatible interest, the present application for

impleading is devoid of merits. Hence, he prays to dismiss the Application with

exemplary costs and render justice.

7. Heard both sides and perused the materials available on record.

8. On perusal of the records, it is alleged that one Late. V.R. Ramakrishnan has

executed an unregistered Will dated 03.02.1997 and the Will dated 03.02.1997 in

question is filed for grant of letter of Administration in TOS No.28 of 2010 which is

still pending before this Court for disposal. During pending of the suit, it is alleged that

the 2nd respondent/1st defendant executed a settlement Deed dated 30.11.2012 in

respect of Item No.1 of the suit schedule property in Document No.11036 of 2012 in

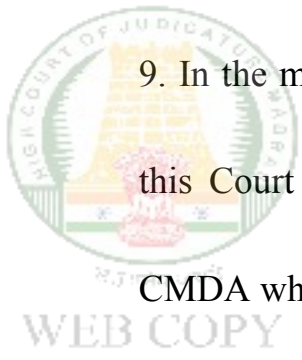
SRO, Sattur in favour her sister. The 1st defendant's Sister executed Settlement Deed

Deed dated 30.11.2012 in Document No.11037 of 2012 in SRO, Sattur in favour her

son. The applicant herein purchased the Item No.1 of the suit schedule property by way

of Sale Deed dated 08.07.2013 in Document No. 3259 of 2013 in SRO, Konnur, from

the 1st defendant's sister's son after verification of revenue records.



9. In the meantime, the 1st respondent herein has filed W.P. No.25693 of 202

this Court challenging the Building permission obtained by the Applicant from the

CMDA wherein this Court observed as under:

“The observations made in the order on the merits of the contentions of the petitioner or the contesting respondents are only for the purpose of this case and any Civil Court or this Court deciding the proceedings in TOS No.28 of 2010 can independently consider the issues on merits uninfluenced by any of the observation made in this order. It is open to the 5th respondent, being the purchaser of substantial property from 6th respondent, to implead himself as a party in the Testamentary Original Suit in TOS No.28 of 2010.”

10. Having regard to the facts and circumstances of the case and considering the observation made in W.P. No.25693 of 2023, it is seen that the Applicant is the purchaser of Item No.1 of the suit schedule property which is related to the Will dated 03.02.1997 to be tried by this Court in TOS No.28 of 2010. Hence, the Applicant being the purchaser, shall be given opportunity to put forth his contention in the present suit to decide the case on merits. Therefore, this Court is inclined to implead the applicant as 2nd defendant in the TOS.



A.A.NAKKIRAN



11. In the result, the Application is allowed.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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