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C.R.P.No.3529 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3529 of 2023

1.C.Abdul Basith

2.C.Zarina

3.C.Fahima

... Petitioners

Vs

1.M.Diviya Dharshana @ Priya

2.M.Malathi

3.B.Nithiyavathi

4.S.Sheela

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 31.03.2023 passed in I.A.No.1 of 2022 in O.S.No.3837 of 2004 by the XIII Assistant Judge (FAC), XIV Assistant City Civil Court at Chennai.

For Petitioners : Mr.M.Raja

For Respondents : Mr.P.M.Bhakthavatsalam
for R1 & R2
R3 & R4 - No representation



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ORDER

This civil revision petition arises against the order passed by the XIII Assistant Judge (FAC), XIV Assistant City Civil Court, Chennai in I.A.No.1 of 2022 in O.S.No.3837 of 2004, dated 31.03.2023. The revision petitioners are the third parties to the suit.

2. The suit in O.S.No.3837 of 2004 was presented by Diviya Dharshana alias Priya and Malathi, the respondents 1 and 2 herein to declare that the cancellation of settlement deed bearing document No.8779/2003 dated 08.12.2003 is null and void.

3. The plaintiffs are the grand daughter and daughter of the first defendant named Nithyavathi. The second defendant Sheela is the other daughter of Nithyavathi. The case of the plaintiffs is that Nithyavathi had purchased the suit schedule mentioned property by way of a registered sale deed in document No.2281/1990 dated 04.06.1990. She had bequeathed the property in favour of Diviya Dharshana, the first plaintiff by a registered Will dated 19.03.1996. Thereafter, she had executed a settlement deed in favour



of the first plaintiff on 17.06.2002, reserving in herself the right to enjoy the corpus as well as the usufructs. Subsequently, Nithyavathi, the first defendant decided to cancel the settlement deed executed in favour of the first plaintiff, and did so by way of a deed of cancellation dated 08.12.2003. She thereafter alienated the property in favour of her other daughter Sheela, the second defendant through a document dated 26.04.2004. This was also cancelled by the first defendant by a deed of cancellation of settlement deed dated 19.10.2005. Seeking to declare that the cancellation of settlement deed dated 08.12.2003 is null and void, the plaintiffs had presented the suit.

4. After hot contest, the suit came to be dismissed on 04.08.2011. Before the appeal was taken on file, the first defendant alienated the property in favour of the civil revision petitioners by way of a registered document dated 16.08.2011 in Document No.3687 of 2011 on the file of Sub Registrar, Sembium. After the said alienation, an appeal was preferred by the plaintiffs and appeal suit in A.S.No.404 of 2013 was entertained by the I Additional City Civil Court, Chennai. In and by way of a judgment dated 14.12.2018, the appeal suit was dismissed confirming the judgment and decree of the XIV Assistant City Civil Court, Chennai.



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5. As much water had passed under the bridge and since no further appeal had been preferred after the passing of judgment and decree in A.S.No.404 of 2013, the purchasers of the property filed an application in I.A.No.1/2022 for return of sale deed bearing document No.2281/1990 dated 04.06.1990, executed in favour of the first defendant.

6. After receiving the counter from the respondents, the learned trial Judge proceeded to dismiss the application on two grounds. The first ground is, the petitioners in the said application being third parties cannot compel the Court to return the document, and the person who marked the document alone is entitled to seek return of the said document. The second ground being that the petitioners have not produced any document to show that the said Nithiyavathi had authorised the civil revision petitioners to receive the Ext.A1 from the plaintiffs, which is in the custody of the court. In such circumstances, the petitioners, who are third parties to the suit, have no right over the document marked as Ext.A1, and hence, their prayer to seek return of document was declined.



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7. Aggrieved by the dismissal of I.A.No.1 of 2022, the present civil revision petition is filed.

8. Heard Mr.M.Raja for the civil revision petitioners and Mr.P.M.Bhakthavatsalam for the respondents 1 & 2 / plaintiffs.

9. Mr.M.Raja would draw my attention to the sale deed dated 16.08.2011, and submit that the first defendant Nithiyavathi had alienated the property in favour of the civil revision petitioners and by virtue of Section 55 of Transfer of Property Act, 1882, they are entitled to the title documents.

10. Per contra, Mr.P.M.Bhakthavatsalam would state that his clients have preferred an appeal against the judgement and decree in A.S.No.404 of 2013, but the learned counsel is not in a position to provide S.R. number or second appeal number. He would further state that as the said document stand in the name of Nithiyavathi, she alone is entitled to receive the document and not the revision petitioners as they are third parties to the suit.

11. I have carefully considered the arguments on either side and I have



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gone through the records.

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12. It is not in dispute that the person who is entitled to the possession of Ext.A1 sale deed is the first defendant Nithiyavathi. This is the document under which she had purchased the suit schedule mentioned property. The claim that Nithiyavathi had executed a settlement deed in favour of the first respondent/first plaintiff had been negated by the trial Court as well as by the lower Appellate Court. As on today, there is no appeal pending as against the judgments and decrees of the Courts below. Nithiyavathi having alienated the property in favour of the civil revision petitioners, she obviously has no right/interest in litigating over the property or the document all over again. She had lost her interest over the property as early as 2011, and her only role as on today is, if an appeal is preferred, would be that of a predecessor-in-title who conveyed the property to the purchasers namely the civil revision petitioners.

13. It is conceded by either side that Nithiyavathi is entitled to Ext.A1. If that is the situation as per Section 55 of the Transfer of Property Act, Nithiyavathi owes the duty to maintain all the documents of title and convey



them to the purchasers. The right of Nithiyavathi devolves on the civil revision petitioners on the execution and registration of the sale deed. The said execution and registration of the sale deed dated 16.08.2011 is not in dispute.

14. In terms of Order XIII Rule 9 of CPC, any party to a dispute or any other person entitled to the documents is permitted by the Code to move an application for return of the documents. Order XIII Rule 9 of CPC is not confined only to the parties to the suit. It specifically states any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on record, is entitled to receive the document provided it is not impounded in terms of Order XIII Rule 8 of the Code. In the present case, Order XIII Rule 8 is not applicable.

15. The view of the learned Trial Judge that a third party to the suit is not entitled to take back the document on the face of Order XIII Rule 9 of CPC is erroneous. I have already found that Nithiyavathi is entitled to the document and she having alienated the property in favour of the civil revision petitioners, the right of Nithiyavathi devolves in entirety with title on them.



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Therefore, the civil revision petitioners having stepped into the shoes of Nithiyavathi, the original owner of the property, they are legally and rightfully entitled to the properties purchased by them on 16.08.2011.

16. Even when a specific provision is not available in the Code of Civil Procedure for return of documents and when the plaintiffs did not have any right over the property, as declared by the trial Court and confirmed by the lower Appellate Court in exercise of inherent powers under Section 151 of the Code, the document could have to be restored to the person rightfully entitled to it. The civil revision petitioners as present owners of the property, are rightfully entitled to the Ext.A1, parent document. This is by virtue of Order XXII Rule 10 read with Section 55 of the Transfer of Property Act. Therefore, the order of the learned Judge in dismissing the application in I.A.No.1/2022 in O.S.No.3837 of 2004 dated 31.03.2023 is set aside.

17. The civil revision petitioners will be entitled to take back Ext.A1 namely the parent document standing in the name of their vendor, Nithiyavathi, the first defendant. Prior to handing over the same to the petitioners in I.A.No.1/2022, the trial Court shall ensure that the petitioners



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substitute Ext.A1 with a certified copy of it and also execute an undertaking/indemnity that they shall produce the original sale deed in document No.2281/1990 dated 04.06.1990, in case an appeal is filed against the decree of the lower Appellate Court or as and when the said document is called for on justifiable reasons.

18. With the above directions, the civil revision petition stands allowed.

No costs.

23.07.2024

Index:Yes/No

Neutral Citation : Yes / No

Speaking order / Non-speaking orders

To:

1.The XIII Assistant Judge
(FAC) XIV Assistant City Civil Court
Chennai.

2.The Section Officer,
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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