



C.R.P.No.4098 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4098 of 2024 &
CMP.No.22527 of 2024

1.Vijaya
2.Kanagavalli
3.Thenmozhi .. Petitioners

Versus

1.Thilagaraj
2.Elavarasi
3.Natesan
4.Elango
5.Manickam
6.Vellingiri .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 23.08.2024 passed in I.A.No.4 of 2023 in O.S.No.70 of 2018 pending on the file of the learned Sub Court, Omalur, Salem District.

For Petitioners : Mr.S.N.Subramani



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For Respondents : No appearance

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ORDER

This civil revision petition arises against the order passed by the learned Subordinate Judge, Omalur, Salem District in I.A.No.4 of 2023 in O.S.No.70 of 2018 dated 23.08.2024.

2. The civil revision petitioners are the plaintiffs in the suit. They have presented a suit for declaration of their title, for permanent injunction and directing the defendants to deliver vacant possession of item 2 of the schedule mentioned property to them. The right of the plaintiffs to claim the reliefs have been denied by way of a written statement.

3. The issues were framed, the parties were pushed to trial and the trial had also commenced. The plaintiffs and the defendants have completed their evidence. During the course of tendering evidence, the first defendant produced Ex.B5 namely, a settlement deed said to have been executed by one Sivagamiammal in favour of Swaminathan, Balasubramaniam and Thilagaraj. This document is dated 13.11.2002.



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4. The defendants wanted the return of this document to raise a loan over the said property. The learned Judge, after receipt of a counter from the plaintiffs, allowed the same by imposing a condition that the property covered under Ex.B5 should not be alienated or encumbered upon, pending disposal of the suit. Aggrieved by the same, the plaintiffs are in revision before me.

5. When the matter came up for admission, notice was ordered to the respondents.

6. The respondents have been served, but none are present to oppose the revision.

7. I have heard Mr.S.N.Subramani for the civil revision petitioner.

8. Mr.S.N.Subramani argues that the document under Ex.B5, dated 13.11.2002 was subsequently cancelled by the donor, Sivagamiammal on 23.11.2004. Hence, he urges that as the document under Ex.B5 has been cancelled, the same should not be returned to the defendants.



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9. I have carefully considered the submissions of Mr.S.N.Subramani.

10. The power to return a document, is available, to the Court under Order XIII Rule 9 of the Code of Civil Procedure. Under the said provision, admitted documents can be returned to a party who has presented the same to the court. The provision, which will operate in the present case, is the proviso appended to the said Rule. Under the proviso, a document can be returned to a party at any time, if the party delivers a certified copy of the said document to the court and undertakes to produce the original whenever called upon by the court. The bar in returning the document operates, if the said document has been rendered void or useless by virtue of the decree granted by a court.

11. The Court is yet to adjudicate upon the validity of the settlement deed and the cancellation deed thereof in the suit. Therefore, the document does not come within the teeth of the second proviso to Order XIII Rule 9(1) of the Code of Civil Procedure. The plaintiffs cannot oppose the



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defendants to take return of their document, if they comply with the provisions of clause a(1) and b of the proviso.

12. At this stage, Mr.S.N.Subramani pleads that if the defendants take return of the document, they might create an encumbrance over the property. This fear is unfounded because the learned Judge has specifically said even if Ex.B5 is taken return by the defendants, they should not create any encumbrance over the property.

13. At this stage, Mr.S.N.Subramani pleads that he wants to cross examine the defendants on the basis of Ex.B5. In case, he is unable to cross examine the defendants on the basis of the certified copy under Ex.B5, he can always request the Court to give a direction to the defendants to produce the original. If the court is convinced with the reasons given by Mr.S.N.Subramani's client for production of the original, I am sure the court will give such a direction to the defendants. If a direction is given, the defendants will be duty bound to produce Ex.B5. Suffice it to state for this revision, the plaintiffs are not aggrieved.



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14. With the above observation, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

15. The learned Judge taking note of the fact that the plaintiffs are senior citizens and one of them is Octogenarian, will expedite the proceedings and ensure that the suit is disposed of on or before 30.04.2025.

15.11.2024

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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To

The Sub Court, Omalur, Salem District.



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V.LAKSHMINARAYANAN, J.

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