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C.R.P. (PD) .No.3679 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 11.11.2024

CORAM:

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(PD).No.3679 of 2023  
and C.M.P.No.23077 of 2023

S.Gopi

.. Petitioner

**Vs.**

1.Manogaran

2.Gowrammal

3.Logeshwari

4.Bharathi

.. Respondents

**Prayer:** This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to strike off the plaint in O.S.No.88 of 2020 on the file of the Additional District Judge, Krishnagiri.

For Petitioner : Mr.G.Karthikeyan  
Senior Counsel  
for Ms.A.Jagadeeswari

For Respondents : Mr.R.Vasudevan  
for Mr.E.Kannadasan



## **ORDER**

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This civil revision petition seeks to strike off the plaint in O.S.No.88 of 2020.

2.O.S.No.88 of 2020 is a suit for specific performance of a contract of sale entered into between one Manogaran and the defendants. The cause of action for the suit is that the defendants 1 to 3 had entered into an agreement of sale for alienation of the suit schedule mentioned property in favour of the plaintiff for a sum of Rs.1,45,00,000/-. He pleaded that the defendants 1 to 3 had received a sum of Rs.1,00,000/- as advance and the balance of Rs.1,44,00,000/- was to be paid within a period of three months. The plaintiff pleaded that on 09.01.2020, he paid a sum of Rs.1,24,00,000/- and obtained a endorsement on the sale agreement. Since, the defendants 1 to 3 did not come forward to execute the sale deed, he issued a lawyer's notice on 22.01.2020 . He came to know that the said defendants are taking steps to alienate the property. Hence, he came forward with the suit.

3.The civil revision petitioner, a third party to the suit agreement, filed



an application to implead himself as a party to the suit. The said application was numbered as I.A.No.3 of 2020. It came to be allowed and the civil revision petitioner was impleaded as 4<sup>th</sup> defendant to the suit. Subsequently, he presented this civil revision petition seeking to strike off the plaint as an abuse of process of Court.

4.The plea of the civil revision petitioner is that the suit property was purchased by one Ammasai Gounder in the year 1984. Ammasai Gounder had executed a will in favour of his first wife Chennammal on 10.08.1996. The said Chennammal, on the death of Ammasai Gounder on 18.11.1998, became the absolute owner of the property. In that capacity, she had settled the property to an extent of 396 sq.ft out of 3010 sq.ft in favour of her only son Srinivasan on 21.02.2011, by way of sale deed. For the remaining extent, Chennammal executed a settlement deed in Srinivasan's favour on 30.01.2014.

5.Based on the sale deed dated 21.02.2011 and settlement deed dated 30.01.2014, Srinivasan executed a sale deed in favour of the civil revision petitioner on 19.12.2017 to an extent of 2614 sq.ft. Therefore, the plea of the



4<sup>th</sup> defendant / civil revision petitioner is that he is the owner of the property and the suit for specific performance at the instance of Manogaran as against Gowrammal, Logeshwari and Bharathi is a sheer abuse of process of Court.

6.Now I have to go to the issue as to how Gowrammal gets the right over the property.

7.Gowrammal, the 1<sup>st</sup> defendant, pleads that she is the second wife of the aforesaid Ammasai Gounder. From the wedlock, two daughters were born, namely Logeshwari and Bharathi who are the defendant Nos.2 & 3 to the aforesaid suit. They claimed that they had obtained the property by way of a resolution of dispute between the families of the 1<sup>st</sup> and 2<sup>nd</sup> wife through a Panchayat. The terms of which were reduced to writing on 13.12.2002. According to her, there was a dispute between 1<sup>st</sup> wife Chennammal and her heirs, and the 2<sup>nd</sup> wife Gowrammal and her heirs. This resulted in filing of O.S.No.7 of 2002, on the file of the District Munsif Court at Krishnagiri. In order to resolve the dispute, elders of village constituted a Panchayat and the suit property had been allotted to them. The narration of the aforesaid facts would show that, the 4<sup>th</sup> defendant, S.Gopi claims the property by virtue of

the will, settlement deed and sale deed from Ammasai Gounder to Chennammal and Chennammal to Srinivasan.

8.The plaintiff Manogaran claims the property by virtue of a panchayat, which had been reduced into writing. The plea is, in the Panchayat, the property was allotted in favour of Gowrammal, Bharathi and Logeshwari and thereafter, they entered into an agreement with him.

9.I heard Mr.G.Karthikeyan, Senior Counsel appearing for Mr.A.Jagadeeswari and Mr.R.Vasudevan for Mr.E.Kannadasan.

10.Mr.G.Karthikeyan, Senior Counsel states that, previously a suit had been presented for declaration of title and permanent injunction in O.S.No.19 of 2018 on the file of the Principal District Judge, Krishnagiri by defendants 1 to 3 herein. They had withdrawn the suit on 24.11.2020. Subsequent to the withdrawal of the suit, they have projected Manogaran as an agreement holder, to knock off the suit property. He further points out that a criminal complaint was lodged by his vendor Srinivasan against the plaintiff and defendants 1 to 3 herein. The said complaint was converted into an FIR in



FIR.No.834 of 2020 on the file of the Krishnagiri Taluk Police Station. The police authorities, after investigation, had filed a final report before the Judicial Magistrate No.II, Krishnagiri, in FR-99/2021 on 18.06.2021.

11.He points out that the police officials, came to a conclusion that the entire transaction that is relied upon by the plaintiff and defendants 1 to 3 are acts of fabrication. Therefore, the suit for specific performance is not maintainable. He further points out that they have withdrawn the suit in O.S.No.19 of 2018, which is a suit for the very same property and now claiming specific performance is nothing but an abuse of process of law.

12.Per contra, Mr.R.Vasudevan pleads that these are disputed question of facts which would have to be gone into at the time of trial.

13.I have gone through the records. I have carefully considered the submissions of Mr.G.Karthikeyan, Senior Counsel for civil revision petitioner and Mr.R.Vasudevan for respondents.

14.The position of law with respect to striking off a plaint has been



recently settled by my brother HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY in *N.Periyasamy Vs. Mohamed Bilaldeen and others* in C.R.P.(MD).No.671 of 2022 dated 23.08.2024. The learned Judge has held that whenever pushing the parties to trial itself will amount to injustice, it is in those circumstances that the Court should invoke the superintending power under Article 227 of the Constitution of India and strike off a plaint. Keeping this principle in mind, I now proceed to analyze the facts of the present case.

15.Both sides agree that the suit property originally belonged to Ammasai Gounder. Ammasai Gounder was a twice married man. Through his first wife Chennammal, he begotten a son by name Srinivasan. Through the second wife, he begotten two daughters, namely the defendants 2 & 3. The issue of the “will”, settlement deed, and sale deed on one side of the issue and the Panchayat document on the other side, have to undergo the test of trial. The fact that a criminal complaint has been presented does not prevent the Civil Court from going into the correctness or otherwise of the documents presented. This is because, a judgment of the Civil Court is not binding on the Criminal Court and vice-versa. See, *Syed Askari Hadi Ali Augustine*



***Imam and another Vs. State (Delhi Administration) and another, (2009) 5***

**SCC 528** (para 25). Both of them operate in two different spheres.

16.It is a plea of Mr.G.Karthikeyan, that the presentation of the suit in O.S.No.19 of 2018 exhausted the right of defendants 1 to 3. This plea has to be analyzed in the perspective of the discussion above. It is the case of the defendants 1 to 3 that they had originally filed O.S.No.7 of 2002 on the file of the District Munsif Court at Krishnagiri, which resulted in a Panchayat document dated 13.12.2002. If this deed is to be proved during the course of trial itself, they would have the right to alienate the property in favour of any third party. Whether the agreement of sale dated 27.10.2019 is true and genuine is a ground to be proved by the Civil Court. I am certain that if the 4<sup>th</sup> defendant S.Gopi takes a plea, as has been done by his vendor Srinivasan, that the document is an act of fabrication, the learned Trial Judge will frame proper issue to that effect and answer the same.

17.On the one hand, I have the civil revision petitioner, who has got a registered sale deed in his favour. On the other hand, I have the 1<sup>st</sup> respondent, who claims to have parted for a sum of Rs.1,24,00,000/- to



defendants 1 to 3. If substantial amounts have been paid by two innocent persons to the members of a family, then necessarily the Trial Court will have to decide which of the two innocent parties had contributed to the fraud. It is settled position of law that if a third party has joined hands with any of the family members and has brought about a fraud, then he will have to suffer the consequences. See ***Lickbarrow V. Mason, (1794) 5 TR 683***. Ashhurst.J had observed “*where one of two innocent parties must suffer by the act of a third, the party who enabled such third party to occasion the loss must sustain it.*” No doubt, it is a wide proposition, yet, the principle has not yet been overruled in its entirety.

18.In so far as the withdrawal of the suit in O.S.No.19 of 2018 is concerned, I cannot hold that the withdrawal of the suit by defendants 1 to 3 has to be held against the 1<sup>st</sup> respondent / plaintiff. This is because the agreement by defendants 1 to 3 with the plaintiff is only in the capacity of owners. A suit for specific performance is not concerned with the title to the property. It is alien to the said dispute. See, ***Panne Khushali and another Vs. Jeewanlal Mathoo Khatik and another, AIR 1976 MP 148 (FB), Raj K.Mehra Vs. Anjali Bhaduri, AIR 1981 Del 237*** and ***Bharat Karsondas***



***Thakkar Vs. Kiran Construction Company and others, (2008) 13 SCC 658.***

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This is because, at the time of dealing with the suit for specific performance, the Court is concerned with the truth and genuineness of the agreement and whether the plaintiff is ready and willing or is suffering from any of the personal bars as contemplated under Section 16 of the Specific Relief Act, 1963. The suit as it stands today is a simple suit for specific performance and in such a suit, the Court need not probe into title.

19. Since there are disputed question of facts, and as no Court has given any finding on the genuineness or the validity of the sale deed and settlement deed executed by Chennammal in favour of Srinivasan and similarly as no Court has declared that the alleged Panchayat partition deed dated 13.12.2002 is not valid and binding, I am not in a position to entertain the plea of Mr.G.Karthikeyan. It is left open to Mr.G.Karthikeyan's client to raise all those pleas that were raised before me before the learned Trial Judge. Suffice it to say this is not a case free of disputed facts. Therefore, I am not inclined to entertain the plea of Mr.G.Karthikeyan and strike off the plaint.



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20. Accordingly, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

**11.11.2024**

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Index : Yes / No

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To

The Additional District Judge, Krishnagiri.



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**V.LAKSHMINARAYANAN, J.**

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