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C.R.P.No.416 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12-12-2024**

CORAM

THE HONOURABLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P No. 416 of 2024

A.Karthik

.... Petitioner

Vs

1. D.Sujatha

2. Dinesh Kumar

3. Bhuvaneswari

.... Respondents

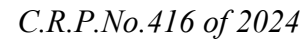
Prayer : Civil Revision Petition under Article 227 of the Constitution of India praying to set aside the judgement of the II Additional Sessions Judge, City Civil Court, Chennai, dated 11.07.2023 made in Crl A No.162 of 2021 in partly allowing the judgement daed 02.03.2020 made in MP No.633 of 2019 in D.V.C.No.11 of 2016 on the file of the XXII Metropolitan Magistrate, Saidapet, Chennai – 15.

For Petitioner : Mr.R.Prasath

For Respondent : Ms.S.Priyadarshini

ORDER

This Civil Revision Petition challenged the order of the II Additional Sessions Judge, City Civil Court, Chennai in Crl A No.162 of 2021 dated 11.07.2023 in modifying the order passed by the XXIII Metropolitan



Magistrate, Saidapet, Chennai in M.P No.633 of 2019 in DVC No.11 of 2016 dated 02.03.2020.

2. DVC No.11 of 2016 was initiated by the 1st respondent against her husband, brother-in-law and mother-in-law respectively. This proceeding seeks for several reliefs under the provisions of the Domestic Violence Act. During the pendency of DVC No.11 of 2016, the 1st respondent moved an application for injunction to restrain the Civil Revision petitioner from alienating the petition-mentioned property.

3. The learned XXIII Metropolitan Magistrate allowed the application on 02.03.2020 granting an order of injunction restraining the Civil Revision Petitioner from encumbering or alienating the property.

4. Aggrieved by the same, an appeal was preferred to the Principal Sessions Judge, Chennai, who bound over the case to the II Additional Sessions Judge, Chennai. The learned Appellate Judge, by virtue of an order dated 11.07.2023, modified the order of injunction to the extent of 1/3rd of the petition-mentioned property and dismissed the application insofar as the other respondents. Hence, this revision at the instance of the appellant.

5. The appellant is the brother in law of the 1st respondent. The 1st



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respondent married the 2nd respondent. From the wedlock, a girl child was born. Due to disputes and differences, parties have separated. Constraining the wife to initiate DVC No.11 of 2016. Pending the application, she filed CrI MP No.633 of 2019 invoking Section 28 of the Protection of Women from Domestic Violence Act. She sought for an injunction against her brother in law from in any manner alienating or encumbering the property.

6. There is no dispute that the petition-mentioned property, which comprises of land and building situated at No.4, Mahalakshmi Street, Valasarawakkam Village, Chennai 101, was purchased by one, Arumugham. He is the Father-in-law of the 1st respondent and the father of the Civil Revision Petitioner. He had purchased the property on 07.02.1993. He passed away on 08.08.2001. On his death, the property devolved on the Civil Revision petitioner, the 2nd respondent, the 3rd respondent and a daughter born to the 3rd respondent and Arumugham, viz., one Vijaya lakshmi. Therefore, each of the legal heirs viz., Vijaya Lakshmi, Bhuvaneshwari, Dinesh Kumar and Karthick (Civil Revision petitioner) are each entitled to 1/4th undivided share in the petition mentioned property.

7. The Domestic violence proceedings were initiated on 14.03.2016. A week thereafter on 21.03.2016, Bhuvaneshwari, Dinesh Kumar and Vijaya Lakshmi released their 3/4th share in favour of the Civil Revision



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Petitioner. Consequently, the 1st respondent felt aggrieved and hence, filed the injunction petition.

8. The learned Trial Judge, after receipt of the counter from the Civil Revision Petitioner, allowed the application as prayed for. Hence, the Civil Revision petitioner preferred an appeal. The learned II Additional Sessions Judge, allowed the appeal in part and granted an injunction restraining the Civil Revision Petitioner, the 2nd and 3rd respondents herein from alienating 1/3rd share of the Civil Revision petitioner, pending disposal, of the Domestic Violence petition. Aggrieved by the same, the present revision.

9. I heard Mr.R.Prasath, learned counsel for the Civil Revision Petitioner and Ms.S.Priyadarshini, learned counsel for the respondent.

10. Mr.Prasath, urged that the petition under the Domestic Violence Act had been served on the Civil Revision petitioner only on 28.03.2016 whereas a week earlier the property had been alienated by way of a release deed by his mother and siblings in his favour. That is on the date of which the release deed had been executed, the petitioner was not even aware of the domestic violence proceedings. Therefore, the grant of injunction as against him requires interference.



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11. Ms.Priyadharshini states that the property had been alienated knowing pretty well that the wife had approached the protection officer under the Provisions of the Domestic Violence Act. She states that such an alienation should be ignored by this Court and the order of injunction granted by the Lower appellate Court should be sustained.

12. I have carefully considered the submissions of either side.

13. It is not in dispute that the property had been purchased by one Arumugham. Arumugham had solemnised his marriage with Bhuvaneswari and from the wedlock, the couple got two sons and one daughter. The two sons are the Civil Revision Petitioner, 2nd respondent and the daughter is one Vijayalakshmi. She is not a party to the proceedings. The respondents 1 and 2 has a daughter, which is well within the knowledge of the Civil Revision Petitioner, as he is her paternal uncle.

14. In terms of Section 39 of the Transfer of Property Act, if a 3rd person has a right of maintenance or a provision for advancement or marriage from the profits of an immovable property and such a property is transferred, the right for maintenance and marriage can be enforced against the transferee if he has notice thereof or if the transfer is gratuitous. The expectation to this Section is not germane to this case.



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15. Here is a case where the transfer has been made gratuitously by the mother and siblings of the Civil Revision Petitioner in his favour. He is aware that the 1st respondent and her daughter have a right of maintenance over the property, which falls to the hands of her husband and yet, he took a document of alienation from them. Therefore, to the extent that the property has fallen to the hands of the Civil Revision petitioner from the 2nd respondent, he is answerable to the claim that is made by the 1st respondent. It is the duty of the father to give his daughter in marriage. That is the purpose of Section 39 of the Transfer of Property Act. The Civil Revision petitioner being the paternal uncle of the child and the brother in law of the 1st respondent cannot hide behind the release deed and plead that the property is not answerable to the claim.

16. Yet remains one issue, as rightly contended by Mr.Prasath, the share that the 2nd respondent has in the property is only 1/4th of the entire extent. He points out that the Trial Judge erroneously allowed the application as prayed for. He points out that the error committed by the learned Trial Judge was corrected by the learned Appellate Court. However, the Lower Appellate Court has granted an injunction for 1/3rd share forgetting that the share of the 2nd respondent is only 1/4th.



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17. On this plea, I am in complete agreeent with Mr.Prasath. The share that the 2nd respondent would have obtained on the death of Arumugam is only 1/4th of the petition mentioned property. Hence, while confirming the order of injunction granted by the Trial Court and the Lower Appellate Court, the extent alone is modified. The Civil Revision petitioner and the respondents 2 and 3 are restrained by an order of injunction from alienating 1/4th share of the petition mentioned property in favour of any 3rd party.

18. With the above observation, this Civil Revision Petition is disposed of.

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Index : Yes/No
NC : Yes/No
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To

1. II Additional Sessions Judge, City Civil Court, Chennai,
2. XXII Metropolitan Magistrate, Saidapet, Chennai – 15.



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V.LAKSHMINARAYANAN, J.

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