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C.R.P.(PD).No.4996 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4996 of 2024 and
CMP.No.28083 of 2024

1. Perumayee
2. Vellaiyammal

... Petitioners

Versus

1. Tamilselvan
2.Sivaprakasam
3.Uthayakumar
4.Tamilselvi
5.Kuppusamy

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal Order dated 24.10.2024 made in I.A.No.61 of 2024 in O.S.No.114 of 2018, on the file of District Munsif-cum-Judicial Magistrate Court, Vazhapadi, Salem District, and to allow the above civil revision petition.

For Petitioners : Ms.R.Divya Bharathi
for Mr.C.Prabakaran



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ORDER

This civil revision petition challenges the order dated 24.10.2024 made in I.A.No.61 of 2024 in O.S.No.114 of 2018, on the file of District Munsif-cum-Judicial Magistrate Court, Vazhapadi, Salem District.

2. The civil revision petitioners are the plaintiffs in O.S.No.767 of 2014 and O.S.No.114 of 2018. Both the suits are pending on the file of the learned District Munsif cum Judicial Magistrate at Vazhapadi. O.S.No. 767 of 2014 is a suit for declaration and for recovery of possession and for permanent injunction restraining the defendants not to alienate the property.

3. The claim of the plaintiff is that the property had been purchased by one Perumayee on 14.02.1949 by way of a registered document. She was a spinster. On her death, her brother Perumal succeeded to her estate. Perumayee's parents had predeceased her. The plaintiffs are none other than the children of Perumal. As Perumal also passed away, the property went into the hands of his children.



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4. The plaintiff pleaded that the defendant Jamuna, on the basis of revenue documents mutated the patta and other revenue records in her favour and started claiming the right over the property. Hence, they presented the suit.

5. During the pendency of the suit, three persons viz., Tamilselvan, Sivaprakasam and Uthyakumar executed deeds of release relinquishing their shares in favour of the 4th respondent viz., one Tamilselvi. The said Tamilselvi executed a Sale deed in favour of one Kuppusamy. Hence, the plaintiffs in O.S.No.767 of 2014, presented another suit in O.S.No.114 of 2018, seeking for declaration that the release deed executed by the defendants 1 to 3 in favour of D4 and the Sale Deed executed by D4 in favour of D5 are null and void.

6. The suit in O.S.No.767 of 2014 which had been presented before the District Munsif Court at Salem was transferred to the District Munif



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cum Judicial Magistrate at Vazhapadi and renumbered as O.S.No.38 of 2018. Pleadings have been completed and the parties are at the stage of trial.

7. The learned District Munsif felt that the suits in O.S.No.114 of 2018 and O.S.No.38 of 2018 (originally presented as O.S.No.767 of 2014) have to be tried together. Trial has also commenced.

8. At that stage, the plaintiff filed an application in I.A.No.61 of 2024, seeking to examine the concerned Village Administrative Officer, Tahsildar and the Sub Registrar in order to substantiate their case. According to them, the origin for the release deed and sale deed was the mutation of the revenue records in favour of Jamuna and therefore, it is necessary to examine them. The learned District Munsif had rejected the same. Hence this revision.

9. I heard Ms.R.Divya Bharathi in support of the revision. She was



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assisted by Mr. Prabakaran.

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10. She submitted that only if the State officials are summoned would it come to the notice of the Court, that the basis for the presentation of documents is the mutation in favour of Jamuna, the defendant in O.S.No.38 of 2018. She points out that the present defendants are the legal representatives of Jamuna and therefore, it is essential to summon them to the Court. She draws my attention to Order XVI Rule 14 of the Code of Civil Procedure and states that the Court has the power to summon any person during the course of trial including a party to the suit, who has not entered the witness box as a witness. Therefore, she states that the learned Trial Judge erred in dismissing the application. She points out that in the event the defendants do not file the documents on the basis of which they are relying upon, the plaintiff would be seriously prejudiced. The submission made by Ms.Divya Bharathi is supported by Mr.C.Prabakaran.

11.I have carefully considered the submissions of Ms.Divya Bharathi and I have gone through the records.



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12. The claim of the plaintiff is that the suit schedule mentioned property was purchased by their parental aunt, Perumayee. On account of the death of said Perumayee, the property was succeeded by their father Perumal. It is through Perumal, they have come to the property. In case, they draw this chain of events, then, they would automatically be entitled for declaration of title and consequential reliefs. In case, they failed to prove that the Perumayee is the owner of the property, then the suit has to fail. In any event, the document on the basis on which they rely upon viz., the release deed in document no. 3026/2017 and sale deed in document No. 3027 of 2017 both have come into force during the pendency of O.S.No.767 of 2014(now in its new avatar as O.S.No.38 of 2018), any transaction which takes place *inter se* the defendants pending a suit for title will obviously be hit by the principle of *lis pendens*. If the suit in O.S.No.767 of 2014 is decreed, whatever the transaction that has been taken between Jamuna and her legal heirs and a third party cannot be sustained. For this purpose, examination of the revenue authorities and



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registration department in absolutely unessential. This is more so when the suit is at the stage of trial.

13. The fear expressed by Ms.Divya Bharathi that if the defendants do not produce the documents she will be put to prejudice, does not cut ice with me for the simple reason that if the defendants does not produce the parent documents, the plaintiffs are always entitled to draw adverse inference in the proceedings.

In the light of above observations, this civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.12.2024

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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

To

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The District Munsif cum Judicial Magistrate Court,
Vazhapadi.

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V.LAKSHMINARAYANAN, J.

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