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C.R.P.Nos.1027 & 1033 of 2024.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.Nos.1027 and 1033 of 2024 and
CMP No.5355 of 2024

Ellamalli

... Petitioner in both CRP's

Vs.

1. Krishnaveni
2. Murugan @ Muruganantham
3. Sheela @ Gomathi
4. Vinoth @ Vignesh
5. Saraswathi
Munu @ Parameshwaran (died)
6. Manjula
Devi (died)
7. Jansi @ Jansirani
8. Barathi
9. Sathya
10. Arumugam
11. Vasantha @ Vasanthakumari
Selvalingam (died)
12. Selvi
13. Kalaivani
14. Kalpana
15. Kavimani

...Respondents in both CRP's.

PRAYER in CRP.No.1027 of 2024 Civil Revision Petition filed under Article 227 of the Constitution of India,praying to set aside the judgment and decree



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dated 20.09.2023 in I.A.No.540 of 2022 in O.S.No.2 of 2009 passed by the Hon'ble Principal Sub- Court, Tindivanam.

PRAYER in CRP.No.1027 of 2024 Civil Revision Petition filed under Article 227 of the Constitution of India,praying to set aside the judgment and decree dated 20.09.2023 in I.A.No.541 of 2022 in O.S.No.2 of 2009 passed by the Hon'ble Principal Sub- Court, Tindivanam.

For Petitioner in both CRP's :Mr.M.Kalaiyaran
for Mr.A.Parthasarathi

Respondents in both CRP's : Mr.T.Dhanasekaran for R1 to R4

COMMON ORDER

These Civil Revision Petitions are filed challenging the orders passed by the Trial Court dismissing the applications filed by the petitioner to re-open the case and recall D.W.3.

2. The respondents 1 to 4 filed a suit for partition against the petitioner and other respondents. The trial in the suit is already over and posted for arguments. At this stage, the present application has been filed by the petitioner/11th defendant in the suit to re-open the case and recall D.W.3. In the



affidavit filed in support of the application, it is stated by the petitioner that suit property originally belonged to one Theerthamalai and he mortgaged the suit properties in favour of defendants 9 and 10 and died without clearing the mortgage debt. Therefore, the legal heirs of Theerthamalai namely defendants 1 to 8 sold the suit properties in favour of 9th defendant. It is further stated by the petitioner/11th defendant that she wants to mark the mortgage deed dated 12.10.1982 , promissory note dated 28.12.1981 etc., as an exhibits in the suit and hence, D.W.3 shall be recalled.

3. In the affidavit filed in support of the application for recall of D.W.3, the petitioner has not stated any reason for her failure to mark those documents when D.W.3 was examined. It is seen from the impugned order that sale deed allegedly executed by legal representatives of Theerthamalai in favour of 9th defendant was already rejected by the Trial Court for want of registration in I.A.No.390 of 2018 by order dated 28.02.2019. Thereafter, again the petitioner filed a memo for marking of the said documents and the same was rejected by the Trial Court on 03.09.2019. When the alleged un-registered sale deed executed by legal representatives of Theerthamalai in



favour of 9th defendant was already rejected by the Trial Court, the petitioner is not entitled to recall D.W.3 for the purpose of marking the documents mentioned in the affidavit which are connected with the very same transaction. The petitioner, in her affidavit, has not given any reason for her failure to produce and mark the said documents when D.W.3 was examined. When un-registered sale deed in favour of 9th defendant dated 01.04.1991 was produced before the Trial Court, the petitioner could have produced the earlier mortgage deed, promissory note etc., for the purpose of marking. Having failed to do so, the petitioner is not entitled to seek re-open of the case and recall of D.W.3 when the matter is posted for arguments after completion of trial. Therefore, the Trial Court rightly came to the conclusion that petitioner has not made out any case to re-open the case and consequently, dismissed the petitions. I do not find anything to interfere with the orders passed by the Trial Court. Accordingly, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2024

Index : Yes / No
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To

The Principal Subordinate Judge, Tindivanam.



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S.SOUNTHAR, J.

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