



C.R.P(MD)No.21 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P(MD)No.21 of 2024

and

CMP(MD)No.184 of 2024

Vasuki

.. Petitioner/Petitioner/
Plaintiff

Vs.

Kanagaraj

.. Respondent/Petitioner/5th
Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.11.2023 in the IA.No.835 of 2023 in OS.No.285 of 2019 on the file of the IV-Additional District Court, Madurai.

For Petitioner : Mr.S.Satheesh Kumar

ORDER

This petition has been filed by the petitioner challenging the fair and decreetal order dated 22.11.2023 in the IA.No.835 of 2023 in OS.No.285 of 2019 passed by the IV-Additional District Judge, Madurai.



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2. The suit in O.S.No.285 of 2019 was filed by this petitioner seeking a decree of partition, separate possession, consequential injunction and declaration declaring that the sale deed dated 05.11.2009 executed by the defendants 1 to 3 in favour of the 5th defendant is 'null and void'. Pending suit, effort was made by the petitioner herein to serve the summons to the respondent herein. In spite of knowing the pendency of the suit, the 5th defendant-Kanagaraj did not appear before the trial Court.

3. The learned counsel for the petitioner submitted that the summon was sent to known address of the respondent herein which was mentioned by him in S.A(MD)No.609 of 2013. According to the learned counsel for the petitioner, the respondent herein is the appellant in the said second appeal, the fact of pendency of the suit was very well known to the respondent herein. Having known of these facts, he remained silent for about 3 years. Thereafter, the IA came to be filed by the respondent in the year 2023. Without considering the above said factual aspects, the trial Court allowed the IA petition on payment of cost of Rs.1,500/-. Aggrieved over the same, the present Civil Revision Petition is filed.



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4. Eventhough it has been stated by the learned counsel for the petitioner that the above said facts very well indicate that the respondent has full knowledge of the facts and remained silent, is shown in the prayer itself wherein para 9 reads as under:

“9. The defendants 1 to 3 have created a document styled as sale deed dated 05.11.2009 in the name of the 5th defendant in respect of the 2nd item of the suit property, based on the decree in OS.No.56 of 2001. The plaintiff is not a party to the said sale deed. The said sale deed will not bind the plaintiff. As the decree and judgment in OS.No.56 of 2001 was set aside by the appellate Court, the sale deed dated 05.11.2009 created in the name of the 5th defendant by the defendants 1 to 3 has become null and void and hit by lis-pendence. The plaintiff came to know about the above said fraudulent sale deed only during the month of May 2018. The defendants 1 to 3 have not stated about the alleged sale deed dated 05.11.2009 through out in the appeal



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proceedings in AS.No.27 of 2009. They have wantonly and purposely suppressed the alleged sale deed dated 05.11.2009 before the appellate Court. The registration copy of the sale deed dated 05.11.2009 is submitted herewith as Document No.6.”

5. As mentioned in the preamble portion, the prayer is sought for in respect of the sale deed effected in favour of the respondent herein. So, absolutely, he is necessary party. Decree or judgment in the absence of him will cause serious prejudice. Eventhough it is stated that the respondent was very well aware of the proceedings. In the light of the specific pleadings and prayer, the order passed by the trial Court does not require any interference. It does not cause any serious prejudice to the petitioner herein.

6. Considering the grievance of the petitioner in the light of the earlier proceedings, the learned IV-Additional District Judge, Madurai, is directed to dispose of the suit in O. S.No.285 of 2019 within a period of five months from the date of



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receipt of a copy of this order.

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7. With the above direction, this Civil Revision Petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

08.01.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
P JL

To

1. The IV-Additional District Judge, Madurai.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J.

PJL

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