



C.R.P.(MD)No.2150 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2150 of 2024
and
C.M.P.(MD)No.12226 of 2024

1.Kalyani

2.Amutha

... Petitioners / Petitioners 1,3 / Defendants 1,3

Vs.

1.Panjavarnampillai

... 1st Respondent / Respondent/ Plaintiff

2.Kaliammal

... 2nd Respondent / 2nd Petitioner / 2nd Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the decree and Judgment dated 07.11.2023 made in I.A.No.3 of 2022 in O.S.No.30 of 2022 on the file of the District Munsif Court, Nilakkottai, Dindigul District and set aside the same and reject the plaint and pass appropriate decree and Judgment.

For Petitioners : Mr.M.Anandapandiyan



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ORDER

The revision petitioners are the defendants 1 & 3 in O.S.No.30 of 2022 on the file of the District Munsif Court, Nilakkottai.

2. The revision petitioners filed I.A.No.3 of 2022 for rejection of the plaint. It was dismissed vide order dated 07.11.2023. Questioning the same, this civil revision petition came to be filed.

3. Panjavarnampillai filed the said suit seeking declaration and permanent injunction in respect of the suit property. According to the plaintiff, the suit property belonged to him and that he executed the settlement deed dated 30.08.1979 in favour of his wife Maruthayee Ammal. Maruthayee Ammal had executed the settlement deed dated 14.08.2014 in favour of her three daughters. The settlee subsequently sold the property in favour of the fourth defendant on 07.02.2022. The case of the plaintiff is that the settlement deed executed in favour of Maruthayee Ammal in the year 1978 contains the restrictive clause that she must not alienate the property. According to the plaintiff, since the settlement deed was executed in breach of the said clause, the settlement deed is void and as a result, the subsequent sale deed dated 07.02.2022 is also void. In I.A.No.3 of 2022, the defendants point out that the



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suit property was actually purchased by Selvam who was the son of the plaintiff born through Maruthayee Ammal vide sale deed dated 16.02.1976. Selvam passed away in the year 1978. Therefore, the property devolved on his mother namely Maruthayee Ammal. It is well settled that since the parties are Hindus, father will not be a class 1 legal heir. Therefore, Maruthayee Ammal thus became the absolute owner of the suit property in her own right following the demise of her son Selvam. She did not derive her title from the settlement deed executed by the plaintiff. In fact, the settlement deed dated 14.08.2014 executed in favour of D1 to D3 traces her title in the manner aforesaid. It does not refer to the 1978 settlement deed executed by the plaintiff. Therefore, the defendants sought rejection of the plaint. In the counter filed in I.A.No.3 of 2022, the plaintiff conceded that the property was purchased in the name of Selvam. He would claim that Selvam was not having any economic means and that it was he who purchased the property in the name of Selvam. But the sale deed dated 1976 does not contain any recital to that effect. I therefore find considerable force in the contention advanced by the learned counsel appearing for the revision petitioners. There has been a suppression of material fact by the plaintiff.



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4. At the same time, I am not in a position to interfere because of a technical reason. It has been held repeatedly by the Hon'ble Supreme Court that while considering the application under Order 7 Rule 11 of C.P.C for rejection of the plaint, one must go only by the plaint averments. Of-course, in this case, the stand of the defendants 1 to 3 is reinforced by sort of an admission made in the counter filed in the IA. The question that arises for consideration is whether the court would be justified in looking into the pleadings in the interlocutory application. As of now, there is no precedent supporting such an approach. Since one has to go only by the plaint averments, the Court below rightly came to the conclusion that cause of action is apparently disclosed. I therefore decline to interfere with the impugned order. Since the revision petitioners have made out a formidable point, this is a case which warrants speedy disposal. I direct the learned District Munsif, Nilakottai to dispose of O.S.No. 30 of 2022 on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

5. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

10.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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WEB COPY

To:

The District Munsif Court, Nilakkottai, Dindigul District.



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G.R.SWAMINATHAN, J.

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