



C.R.P.(MD).Nos.652 of 2018 & 1835 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.06.2024

DELIVERED ON: 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).Nos.652 of 2018 & 1835 of 2019

and

CMP(MD).No.2821 of 2018, 9455 of 2019 & 6250 of 2020

CRP(MD).No.652 of 2018

Subramanian

...Petitioner/11th Respondent
/11th Defendant

Vs.

1.R.Sivakumar

....1st Respondent/Petitioner
/Plaintiff

2.Kannan Pillai

3.Kanagasabapathy Pillai

4.Suresh Kumar

5.Ramesh Kumar

6.Ravi @ Krishnasamy

7.Rajagopal



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8.Selvaraj

9.Geetha Rani

10.Rajalakshmi

11.Nirmala ...Respondents 2 to 11/Respondents 1 to 10
Defendants 1 to 10

12.Perumal

13.Prakash

14.Padmini

15.Baskar

16.Noor Mohammed

17.PushparajRespondents 12 to 17/---/----

(Respondents 12 to 17 are impleaded
as per order dated 05.06.2024)

CRP(MD).No.1835 of 2019

1.Nirmala

2.Subramanian ...Petitioners/Respondents 10 & 11
/Defendants 10 & 11

Vs

1.R.Sivakumar

2.Kannan Pillai

2/23



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3.Kanagasabapathy Pillai

4.Suresh Kumar

5.Ramesh Kumar

6.Ravi & Krishnasamy

7.Rajagopal

8.Selvaraj

9.Geetha Rani

10.RajalakshmiRespondents 2 to 10/Respondents 1 to 9
/Defendants 1 to 9

PRAYER in CRP(MD).No.652 of 2018: The Civil Revision Petitions have been filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 18.10.2016 passed in I.A.No.1040 of 2014 in O.S.No.774 of 2003 on the file of the Subordinate Judge, Tiruchirappalli and allow the present civil revision petition.

PRAYER in CRP(MD).No.1835 of 2019 : The Civil Revision Petitions have been filed under Article 227 of Constitution of India, to set aside the order dated 04.04.2017 consequential order dated 26.04.2017 passed in I.A.No.276 of 2017 in O.S.No.774 of 2003 on the file of the Subordinate Judge, Tiruchirappalli and allow the present civil revision petition.



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For Petitioner

: M/s.J.Anandhavalli

For Respondents

: Mr.Shangar Murali for R1

:Mr.K.Prabhakar R2 & R4

: No appearance for R3, R5 to R11

: Mr.I.Vel Pradeep for R12 to R14

: No appearance for R16 & 17

CRP(MD).No.1835 of 2019

For Petitioner

: M/s.J.Anandhavalli

For Respondents

: Mr.Shangar Murali for R1

: No appearance for R2 to R10

COMMON ORDER

Both the revision petitions arise out of two interim orders passed in O.S.No.774 of 2003 on the file of the Subordinate Court, Tiruchirappalli.

2.The plaintiff in the above said suit, had filed I.A.No.1040 of 2014 under Order 6 Rule 17 of C.P.C to amend the plaint in order to exonerate the defendants 12 to 16 from the suit. The said application was allowed on 18.10.2016. Challenging the same, CRP(MD).No.652 of 2018 has been filed by the 11th defendant.



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3.The plaintiff in the above said suit had filed I.A.No.276 of 2017 under Section 151 of C.P.C to communicate the order of interim injunction passed on 27.02.2007 made in C.M.A.No.229 of 2003 to the Sub Registrar Srirengam. The said application came to be allowed on 04.04.2017. Challenging the same, defendants 10 and 11 in the above said suit have filed CRP(MD).No.1835 of 2019.

4.Since the issues involved in both the revision petitions are inter connected, they are tagged together and a common order is passed.

(A)Facts leading to the filing of both the revision petitions are as follows:

5.The plaintiff had filed the said suit for the relief of partition and separate possession of his 1/6th share in the suit schedule property and for separate possession. Pending suit, the plaintiff had filed I.A.No.963 of 2003 for temporary injunction to restrain the defendants and others from encumbering the suit schedule property either by way of sale or by other means pending disposal of the suit. The trial Court by an order dated 11.11.2003 had dismissed the injunction petition. Challenging the same, the plaintiff had filed C.M.A.No.229 of 2003 before the I Additional District Judge (PCR), Tiruchirappalli. The learned District Judge after



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considering the submissions made on either side, had dismissed the appeal.

However, directed both the parties not to make any further encumbrance from the date of order in appeal till the disposal of the suit.

6. Alleging that the defendants made encumbrances of the property, in violation of the orders in CMA.No.229 of 2003, the plaintiff had filed I.A.No.276 of 2017 under Section 151 of C.P.C praying the trial Court to pass an order to communicate the order in CMA.No.229 of 2003 to the Sub Registrar, Srirengam so that there may not be any further encumbrance by the defendants. The respondents/defendants had not filed their counter and they were set exparte and the trial Court proceeded to allow the application on 04.04.2017 and intimation was sent to the Sub Registrar and it was served on 26.04.2017. In compliance with the said order of the Court, the Sub Registrar had entered the order of the Court in the encumbrance certificate.

7. The plaintiff had further contended that the defendants 12 and 13 had purchased an extent of 26 ½ cents in the suit schedule property on 09.04.2002. Similarly, defendants 14 and 15 have purchased another 26 ½ cents on the same day. The 16th defendant had purchased an extent of 58 cents on 08.04.2002. The defendants 12 to 16 had approached the plaintiff



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admitting his 1/6th share and requested him to release his 1/6th share in the property purchased by them. Accordingly, the plaintiff had released his 1/6th share in favour of those defendants confirming their title by filing a compromise memo.

8. I.A.No.1039 of 2014 was filed to record the said compromise memo and the same was allowed. As a consequence, the plaintiff had filed I.A.No.1040 of 2014 to exonerate the defendants 12 to 16 from the array of parties by way of an amendment application. This application was stoutly contested by the 11th defendant on the ground that there is a collusion between the plaintiff and the defendants 12 to 16. Since the plaintiff did not have any share in the suit schedule property, the question of relinquishment of his share in favour of the defendants 12 to 16 would not arise. Therefore, according to the 11th defendant, defendants 12 to 16 cannot be exonerated. However, by an order dated 18.10.2016, the said application was allowed exonerating the defendants 12 to 16 from the suit. Challenging the same, CRP(MD).No.652 of 2018 has been filed by the 11th defendant.



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(B)Contentions of the learned counsel appearing on either side are as follows:

9.The learned counsel for the revision petitioners had contended that the plaintiff has created encumbrance by execution of three release deed in favour of defendants 12 to 16 in the suit. Though the documents are captioned as release deed, it is the sale deed executed by the plaintiff in favour of those defendants after receiving consideration. These sale deeds have been executed in violation of the order passed in CMA.No.229 of 2003. Therefore, when the exoneration is based upon a release deed executed in violation of the injunction order, the same cannot be entertained by the Court.

10.The learned counsel appearing for the revision petitioners had further contended that in the schedule of property, the plaintiff had sought to exclude 1 acre 11 cents and he had retained an extent of 2 acre 49 cents by way of amendment. She had further contended that the alleged release deeds were executed by the plaintiff on the premise that he is having 1/6th share in the suit schedule property which is specifically disputed by the defendants in their written statement. Therefore, if the defendants 12 to 16 are exonerated from the suit, the other defendants would not have any



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remedy whatsoever. Therefore, the trial Court was not right in allowing the application for exoneration from defendants 12 to 16 from the array of parties.

11.The learned counsel for the revision petitioners had further contended that if there is any violation of order of status quo or an order of interim injunction passed by the Court, the only remedy open to the plaintiff is to invoke Order 39 Rule 2A of C.P.C. The trial Court has got powers to order the attachment of property. Without resorting to the said provision, the plaintiff cannot invoke Section 151 of C.P.C to communicate the order of status quo to the Sub-Registrar. She had further contended that when a specific provision under Order 39 Rule 2-A is available in CPC, the question invoking Section 151 of C.P.C does not arise. That apart, no opportunity was granted to the revision petitioners before passing an order of direction to the Sub Registrar to record the order of status quo.

12.The learned counsel for the revision petitioners had further contended that the plaintiff has violated the order of status quo passed by the appellate Court in CMA.No.229 of 2003 and has executed a release deed in favour of the defendants 12 to 16. After violating the order of the



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Court, the plaintiff is attempting to invoke the power of the Court to curb the alleged attempt made on the side of the defendants to alienate the property. When the plaintiff has not approached the Court with clean hands, the Court ought not to have invoked its power under Section 151 of C.P.C to communicate the order of status quo to the Sub Registrar, Srirengam. Hence, she had prayed for allowing the revision petitions.

13.Per contra, the learned counsel appearing for the respondent/plaintiff had contended that after the order of status quo was granted by the First Appellate Court on 21.02.2007, 10th defendant had executed several sale deeds in favour of the third parties. Therefore, the plaintiff was constrained to file an application to record the order of status quo in the encumbrance so that there would not be any further alienation.

14.The learned counsel for the first respondent had relied upon the judgment of ***Keral High Court in R.F.A.No.626 of 2013 dated 22.01.2015 (Subramanian Vs. Padmaja)*** to contend that the Civil Court has got power under Section 151 of C.P.C to issue a direction to the Sub Registrar Office to enter the particulars to the orders in Book -1. The learned counsel had further relied upon a judgment of the Hon'ble Supreme Court in ***Civil Appeal Nos.2795-2796 of 2011 dated 30.03.2011***



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(K.K.Velusamy Vs.N.Palanisamy) to contend that the power under Section 151 of C.P.C have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the code governing the matter, the bonafides of the applicant cannot be doubted and such exercise should meet the ends of justice and to prevent abuse of process of Court. According to him, despite the order of status-quo, the defendants continue to alienate the property and therefore, in order to prevent abuse of process of Court and left with no other remedy, the petitioners had invoked Section 151 of C.P.C to record the order of status quo in the encumbrance certificate. Hence, he prayed for sustaining the order passed by the trial Court wherein the orders have been passed to record the order of status-quo.

15.The learned counsel for the respondent had relied upon the judgment of the Hon'ble Supreme Court reported in **1970 3 SCC 124 (Bai Chanchal and others Vs. Syed Jalaluddin and others)** had contended that Order 23 Rule 3 of C.P.C envisages a decree being passed in respect of part of the subject matter of the suit on a compromise without waiting for determination of other questions. Since the plaintiff had entered upon a compromise with the defendants 12 to 16, the Court can very well



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exonerate those defendants at the request of the plaintiff. Further, it is the prerogative of the plaintiff either to proceed with the suit as against the defendants 12 to 16 or to exonerate them. The other co-defendants do not have a sale in the said matter. In view of Order 23 Rule 1 of C.P.C, the plaintiff is at liberty to abandon his suit or a part of his claim against all or any of the defendants. Therefore, the request of the plaintiff for exonerating the plaintiffs 12 to 16 is within the legal rights of the plaintiff and therefore, the same cannot be questioned by the defendants.

16.The defence of the 11th defendant that the plaintiff does not have any share in the suit schedule property is still open to be adjudicated upon in the civil suit. Hence, he prayed for confirmed the order passed by the trial Court with regard to exoneration of the defendants 12 to 16.

17.I have considered the submissions made on either side and perused the material records.

(B) Discussions:

18.The learned I Additional District Judge, Tiruchirappalli in C.M.A.No.229 of 2003 had passed the following orders:

“ In the result the civil miscellaneous appeal is dismissed and the decree and judgment of the trial Court is modified. This



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Court directs both the petitioner and the respondent not to make any further encumbrance from the date of this order till the disposal of the suit. The parties are at liberty to raise the points including the points raised before this Court in the main suit. The trial Court is directed to dispose the suit expeditiously.”

19.This order has not been challenged and it has attained finality. After the said order, the revision petitioner has executed two sale deeds on 08.05.2013 and 10.06.2015 in favour of third parties. The 10th defendant had executed several sale deeds in the year 2019 and 2020 in favour of the 11th defendant and third parties. Therefore, it is clear that after the order, the revision petitioners and the 10th defendant have proceeded to alienate a portion of the suit schedule property in violation of the orders of the Court. Similarly, the plaintiff had also executed three release deeds in favour of the defendants 12 to 16 with regard to the suit schedule property after the order of status-quo in December 2011. Therefore, it is clear that both the parties have acted in violation of the orders of the Court in CMA.No.229 of 2003 dated 21.02.2007.

20.Neither there is a provision nor a prohibition under CPC or under Civil Rules of Practice for communicating an order of interim



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injunction to the Sub Registrar office to prevent any further alienation of the property. The alienation in violation of the injunction order would be void. However, there is a possibility that the purchaser may raise a dispute either during the pendency of the suit or during execution proceedings. Therefore, it is better to enter the order of interim injunction in the encumbrance of the concerned Sub Registrar office so that the parties to the suit as well as the bonafide purchasers would be protected.

21.The Hon'ble Supreme Court in a judgment reported in **(2010) 8 SCC (Vinod Seth Vs. Devinder Bajaj and another)** in Paragraph No.28 has held as follows:

“28.As the provisions of the Code are not exhaustive, section 151 is intended to apply where the Code does not cover any particular procedural aspect, and interests of justice require the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or

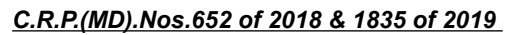


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recognize rights, or to create liabilities and obligations not contemplated by any law.”

22.The Hon'ble Division Bench of Kerala High Court in a judgement reported in *(2015) SCC Online Ker 39529 (Subramanian Vs. Padmaja)* in Paragraph No.6 has held as follows:

“6.True, an order of injunction restraining alienation would not come within the purview of S.89(5) of the Act. An order of prohibitory injunction only interferes with the mode of enjoyment of property. If for that reason, the particulars of such orders are not entered in the books maintained at the Sub Registry, the litigants who do not have any respect for orders of the courts will be able to defeat such orders by alienating the property to third parties. If orders creating, declaring transferring, limiting or extinguishing any right, title or interest to or in immovable property and orders of attachment of immovable property are required by law to be entered in Book 1 for the benefit of those who apply for search of encumbrances in respect of that property, there is no reason why an order of injunction restraining alienation of the property shall not be entered in Book 1 maintained at the Sub Registry. In Mary V.Issac, ((2014) 1 KLT 923), this Court held that though there is no provision to communicate the orders restraining alienation of immovable properties to the office of the Sub Registrar



23. In view of the judgment of the Hon'ble Supreme Court and Division Bench judgment of the Kerala High Court, it is clear that



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Section 151 C.P.C can be invoked when the code does not cover any particular procedural aspect and interest of justice require the exercise of power under Section 151 of C.P.C. In the present case, though the parties have been prohibited from alienating the property, both the parties have started to deal with the property in violation of the orders of the Court. Therefore, in order to prevent abuse of process of Court and to meet the ends justice, the trial Court was right in invoking Section 151 of C.P.C to direct the concerned Sub Registrar to make the entries in the encumbrance certificate relating to the order of status quo passed by the Court. However, it is made clear that as and when the suit is disposed of or the order of interim injunction is vacated, the Court has to communicate the same to the concerned Sub Registrar with direction to make an entry with regard to the vacating of the interim orders.

24.The plaintiff had filed the said suit for partition and separate possession of his alleged 1/6th share in the suit schedule property. As per Paragraph No.10 of the plaint, the 3rd defendant had executed a registered sale deed in favour of the plaintiff on 19.12.2002 for a valuable consideration in respect of in undivided share of 60 cents in the suit schedule property. Since the other co-sharers have not joined in execution



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of the said sale deed, the plaintiff had filed the suit for partition, based upon the purchase of his undivided share from the 3rd defendant.

25.The 11th defendant had filed a written statement contending that the 3rd defendant in the suit had already filed O.S.No.383 of 2002 seeking partition and separate possession and the said suit was dismissed and therefore, the 3rd defendant do not have any right to alienate his alleged 1/6th share in the suit schedule property. That apart, the suit schedule property has already been sold prior to O.S.No.383 of 2002.

26.From the averments in the written statement, it is clear that 11th defendant has specifically questioned the title of the plaintiff's vendor to execute a sale deed in favour of the defendant on 19.12.2002. He had further contended in the written statement, that defendants 1 and 2 alone are entitled to deal with the property and therefore, the sale deed executed by them in favour of defendants 10 to 17 are legally valid and binding upon the plaintiff.

27.Pending suit for partition, the plaintiff had entered into a compromise with defendants 12 to 16 and has filed a memo of compromise before the Court to the effect that defendants 12 to 16 by admitting the title



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of the plaintiff with regard to his undivided 1/6th share had purchased the said 1/6th share from the plaintiff by paying Rs.15,70,000/- as full quit.

28.Based upon the said compromise, the plaintiff is said to have executed three registered release deed on 23.12.2011 in favour of the defendant 12 to 16. Based upon the said compromise memo, the plaintiff had filed I.A.No.1039 of 2014 under Order 23 Rule 1 C.P.C to record the compromise memo and pass a decree in terms of compromise. The application was allowed and compromise was recorded by the trial Court on 08.07.2014.

29.The plaintiff had filed I.A.No.1040 of 2014 under Order 6 Rule 17 of C.P.C to exonerate defendants 12 to 16 from the array of parties, in view of the above said compromise. This application was strongly resisted by 11th defendant on the ground that the plaintiff or his vendor do not have any right or title over 1/6th share in the suit schedule property. Therefore, the alleged compromise entered into between the plaintiff and the defendants 12 to 16 would not confer any right upon the plaintiff. However, the trial Court has proceeded to allow the said application on the ground that the plaintiff has got right to abandon a part



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of the claim in the suit.

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30. Considering the fact that the suit is for partition and if the defendants pay Court fee, the Court is empowered to declare their shares also. When the defendants take a specific stand that the third defendant do not have any title over 1/6th share, the alienation made by the third defendant in favour of the defendants 12 to 16 may not be valid. By way of compromise, the plaintiff had endorsed 1/6th share of the 3rd defendant.

31. Though the plaintiff would be entitled to enter into a compromise with some of the defendants with regard to his alleged 1/6th share, considering the fact that the suit is one for partition and separate possession, the presence of all the co-sharers in the array of parties is very much necessary. Ultimately, if the Court finds that the third defendant does not have any 1/6th share in the suit schedule properties, the title of the plaintiff and defendants 12 to 16 are likely to be affected. In the absence of defendants 12 to 16, the Court may not be in a position to arrive at a finding that the 3rd defendant and the defendants 12 to 16 are not having title over the property. In such circumstances, this Court is of the considered opinion that the defendants 12 to 16 shall continue to be in the array of parties and in their presence, the title and possession of the



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plaintiff and the co-defendant in the suit schedule properties have to be adjudicated upon. In case, if the plaintiff succeeds, he may be chosen not to execute the decree as against the defendants 12 to 16.

32.In view of the above said deliberations, this Court is of the considered opinion that the trial Court was not right in exonerating the defendants 12 to 16 from the array of parties.

33.In view of the above said discussions, this Court passes the following orders.

(i) The order passed by the trial Court in I.A.No.1040 of 2014 in O.S.No.774 of 2003 dated 18.10.2016 is hereby set aside and CRP(MD).No.652 of 218 stands allowed.

(ii) The order passed by the trial Court in I.A.No.276 of 2017 in O.S.No.774 of 2003 on 04.04.2017 is hereby confirmed and CRP(MD).No.1835 of 2019 stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.08.2024

Index : Yes/No
Internet : Yes/No
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To

1. The I Additional District Judge (PCR)
Tiruchirappalli
2. The Subordinate Judge
Tiruchirappalli
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

Pre-delivery common order made in

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and
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