



C.R.P. (MD) No. 2380 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 2380 of 2023

and

C.M.P. (MD) No.12248 of 2023

Prakasam

... Petitioner/Plaintiff

-VS-

1.Kulanthaithiresh
2.S.Daniel Joseph
3.S.Josphin Suganya
4.Disen Raja

... Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 30.03.2023 made in I.A.No. 1 of 2022 in O.S.No.93 of 2021 on the file of the Sub-Court, Sivagangai.

For Petitioner : Mr.N.Tamilmani

For Respondents : Mr.K.Chengiz Khan

ORDER

The Civil Revision Petition is directed against the order dated 30.03.2023 made in I.A.No.1 of 2022 in O.S.No.93 of 2021.

2. The suit is filed by the petitioner/plaintiff stating that the suit properties originally belong to their father and mother by two separate Wills,



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they have categorically bequeathed specific portion to the plaintiff as well as the another brother, who is the husband of the first defendant. While so, the first defendant and their family members are creating documents and are encroaching some portion of the plaintiff's property.

3. The case of the defendant is that they are not encroaching into the share of the plaintiff. Whatever is mentioned as the subject matter of the suit has been given by the plaintiff himself by way of exchange. The parties went into a trial with the said pleadings. PW1 filed a proof affidavit and he was cross-examined on 04.08.2022. During the course of the cross-examination, according to the learned Counsel for the petitioner, he has given certain answers which are diametrically opposite to the proof affidavit as also his original case in the plaint. The reasons for PW1/plaintiff to give such answers is stated to be an illness to the plaintiff and because of the same, he could not properly comprehend and answer the questions, as the questions were complex in nature. The learned Counsel would point out to page (3) of the cross-examination, wherein PW.1 has admitted that as per Ex.A8 and A9, his younger brother had given settlement deeds and he has also admitted that he has sold his share which came by way of exchange. Therefore, now the learned Counsel for the petitioner would submit that this present application is filed to scrap the



entire evidence so that fresh evidence can be let in on behalf of the plaintiff.

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4. The said prayer is opposed by the learned Counsel appearing on behalf the respondents by vehemently relying upon the judgments of this Court in (i) ***Muthukaruppan v. Ponnammal*** [C.R.P (MD) No.2513 of 2012 (paragraphs 4, 5 and 6)] (ii) ***K.Shanmugam v. T.Ambiga*** [C.R.P (MD) No.1796 of 2021 (paragraph 10)] and (iii) ***Dr.C.Nagarajan v. M/s.Express Publication (Madurai) Limited*** [C.R.P (MD) No.401 of 2017 (paragraphs 3 to 9) to contend that once an evidence is let in, the party cannot wriggle out of the same and the evidence once let in cannot be erased.

5. In reply thereof, the learned Counsel appearing on behalf of the revision petitioner would submit that in spite of the medical records being produced by the petitioner, the Trial Court rejected the application only on the ground that the medical condition of the petitioner is not proved. Therefore, he would request that this Court should interfere.

6. I have considered the respective submissions made on either side and perused the material records of the case. As rightly contended by the learned Counsel for the respondent herein that the evidence once let in, cannot be



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undone. Moreover, in this case, it is the case of the defendant that the portion of the property which is claimed by the plaintiff, has been given away by him by way of exchange deed, settlement deeds, etc. Therefore, the case of the parties relating to immovable properties should be governed by registered documents. In view thereof, there is no question of the plaintiff's case itself getting prejudiced by any slip of the tongue or one answer given in the cross-examination. Further, there cannot be any medical condition to which one wrong answer or two or three wrong answers alone can be attributed. On a perusal of the cross-examination, it can be seen that the party's ability to give evidence cannot be doubted by this Court. In view thereof, evidence once come on record cannot be scrapped altogether.

7. With the above observations, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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NCC : Yes/No

PKN



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1. The Sub-Court, Sivagangai.



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D.BHARATHA CHAKRAVARTHY, J.

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