



C.R.P.(MD)No.2509 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.2509 of 2023
and C.M.P.(MD).No.13051 of 2023

G.Suganthaa Devi

... Petitioner

Vs.

1.R.Abirami

2.S.Udaya Prakash

3.Malarvizhi

(3rd Respondent mentally disorder person presently staying at New
Creation Trust)

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the fair and executable order passed by the II Additional Sub Judge, Madurai in I.A.No.634 of 2022 in I.A.No.720 of 2019 in I.A.No.39 of 2015 in O.S.No.205 of 2008 on 09.08.2023.

For Petitioner : Mr.N.S.Karthikeyan

For Respondents : Mr.Perumal for R1
No Appearance for R3



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ORDER

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This civil revision petition has been filed to set aside the fair and executable order passed by the II Additional Sub Judge, Madurai in I.A.No.634 of 2022 in I.A.No.720 of 2019 in I.A.No.39 of 2015 in O.S.No.205 of 2008 on 09.08.2023.

2.The facts in brief:

Suit in O.S.No.205 of 2008 was filed by the revision petitioner against the second and third respondents herein, seeking the relief of partition in respect of 1/3rd share and for costs. A preliminary decree for partition was passed and thereafter, final decree application was filed in I.A.No.39 of 2015 by a third party, who is the first respondent herein arraying the revision petitioner and original defendants as respondents, on the ground that she purchased 2/3rd share of the properties from the respondents 2 and 3 namely the original defendants on 12.12.2008 through a registered sale deed. So she is entitled for the allotment of 2/3rd share in the suit property. .

3.Pending the further process, the revision petitioner herein, who



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is the original plaintiff filed I.A.No.720 of 2019, stating that the purchase made by the first respondent is hit by *lis pendense*. The third respondent namely Malarvizhi is a mentally unsound infirm person. She is not capable of executing a sale deed in favour of the first respondent. The first respondent with active connivance of the second respondent created the false document. The third respondent was taking treatment from Government Rajaji Hospital, Madurai for her mental illness. After filing of the suit the second respondent admitted the third respondent in Immanuvel Trust, Psychiatric Home at Madurai. So it is necessary to examine the Doctor attached to Government Rajaji Hospital, Madurai, Village Administrative Officer, Alwarpuram and the Manager/Administrative Authority of the trust and any one of the Psychiatric Doctor practising in Madurai, to prove the same. With the above said contention, that application was filed seeking permission to send summons to the witnesses. That petition was allowed on 07.12.2019 by the trial Court. Thereafter, witnesses batta was paid.

4.In pursuance of the summons, Manager/Administrative Authority, Immanuvel Trust was examined as RW2. But other two



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witnesses namely Psychiatric Doctor, Government Rajaji Hospital and Village Administrative Officer, Alwarpuram, did not appear. So another application was taken up by the revision petitioner to issue witness warrant against them. That came to be returned by the trial Court, even after rectifying the defects, questioning the maintainability. But without considering the same, the case was posed for further respondent's side evidence on 12.10.2022. Due to the absence of the learned counsel on record for the respondent namely revision petitioner herein, it was closed and posted for arguments. Again to reopen the same I.A.No.634 of 2022, was filed, which came to be dismissed by the trial Court. Against which, this revision is preferred.

5.The third respondent though has been served and entered appearance through Advocate, none appears on behalf of him. In spite of repeated order for notice, it could not be served upon the second respondent. So in the presence of available respondents the matter can be disposed of. Heard the learned counsel for the petitioner and the learned counsel for the first respondent.



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6.It is the plaintiff, who filed the suit arraying second and third respondents as defendants. At the time of filing the suit, it was not disclosed by the revision petitioner that the third respondent is mentally ill person. Not only that, without filing proper petition to represent the third respondent in the suit, suit was filed as if the third respondent is the sane person. So when this was pointed out by me to the revision petitioner as to how the suit was filed without mentioning the above said fact and without seeking appointment of guardian or next person as the case may be for the third respondent, no proper answer came from the side of the revision petitioner.

7.Now after coming to know that the second and third respondents sold their 2/3rd share in favour of third party namely the first respondent herein, such a plea has been taken that the third respondent is incapable of selling the property in favour of the first respondent due to her mental incapacity. Now she wants to prove the same during the final decree proceedings. Whether such a course is available to the revision petitioner is matter for consideration by the trial Court. I am not going into that aspects.



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8. Now already a person from a Trust, where the third respondent have been admitted has been examined and for what purpose, the revision petitioner wants to examine the Psychiatric Doctor attached to Government Rajaji Hospital and Village Administrative Officer, Alwarpurm is not known. But, however, it is seen that permission was granted by the trial Court to examine them. But, they failed to appear and warrant was requested. That was not considered by the trial Court.

9. So on the basis of the available records the matter can be disposed of by the trial Court. Moreover, scope of the final decree proceedings is very limited. It cannot be enlarged as requested by the revision petitioner. Moreover, reading of the order passed by the trial Court also does indicate that a detailed order was passed in I.A.No.120 of 2018. That order was suppressed by the revision petitioner and what was the order passed and for what purpose the above said application was filed is not clear on records. It appears that the revision petitioner wants to drag on the matter endlessly making one or other attempt.



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10.It is brought to the notice of this Court to the order passed in C.R.P.(MD).No.1040 of 2019. That revision was preferred against the order passed in I.A.No.120 of 2018 mentioned by the trial Court in its order. That application was taken out for appointment of next person or guardian for the third respondent. That came to be dismissed as indicated above. Against which, the above said revision was preferred. A curious submission was made before this Court in the above said Civil Revision Petition that the third respondent is not now traceable. So the question of appointment of guardian or next friend does not arise at all. This is the third attempt made by the revision petitioner before this Court. As mentioned above, it is nothing but, delaying tactics adopted and is being adopted by the revision petitioner to see that the matter is not disposed of. So I find absolutely no merit in this revision petition.

11.Accordingly, this civil revision stands dismissed with costs. Consequently, connected miscellaneous petition is closed.

06.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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- 1.The II Additional Sub Judge, Madurai.
- 2.The Section Officer, E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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