



CRP(MD).No. 258 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.03.2024

CORAM :

THE HON'BLE MR JUSTICE G.ILANGO VAN

CRP(MD).No. 258 of 2024 and
CMP(MD).No.1167 of 2024

Rani

... Petitioner

Vs.

1.Anthonysamy
2.Rajarathinam @ Paapudiayar
3.Samsumeri

... Respondents

PRAYER:- Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 05.08.2022 made in I.A.No.1 of 2022 in O.S.No.99 of 2019 on the file of the District Munsif Cum Judicial Magistrate Court, Gandharvakkottai.

For Petitioners : Mr.S.I. Muthiah

For respondents : No appearance

ORDER

This Civil Revision Petition is filed against the fair and



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decreetal order, dated 05.08.2022 made in I.A.No.1 of 2022 in O.S.No.99 of 2019 on the file of the District Munsif Cum Judicial Magistrate Court, Gandharvakkottai.

2. The suit in O.S.No.158 of 2017 was filed by the first respondent herein / plaintiff seeking the relief of declaration that sale deed, dated 09.06.2017 is invalid and for permanent injunction restraining the 3rd defendant and his agents and their men and not to interfere with the peaceful possession of the plaintiff in respect of the portions marked as “A” and “E” and for cost.

3. Pending suit, the petition was taken out by the plaintiff under Order 26 Rule 9 CPC seeking an appointment of Commissioner to note down the physical features and to file the report. That was allowed by the trial Court. Against which, this revision is preferred.

4. The petition was taken out by the plaintiff in the following averments:



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The property comprised in S.No.193 / 12 measuring about 2.02.5 acres on the ground that now it is divided in to several portions.

Along with the plaint the plaintiff enclosed a Rough Sketch. The portion marked as “A” belongs to the plaintiff and the “B” belongs to the first defendant; “E” to the 2nd defendant and another portion mentioned as “E” was released by the 2nd defendant in his favour. But again the family arrangements, the first defendant sold the property including the portion that was allotted to him to the third defendant. Preventing him from enjoying the Well in the suit property. To note down the physical features only this petition is filed. So that unnecessary oral evidence can be avoided.

5. That was resisted by the respondent stating that the borwell is kept in to the share of the first defendant that was sold to the third defendant by the first defendant and he was in enjoyment. To collect the evidence only this petition is filed.

6. After hearing both sides, the trial Court allowed the petition stating that if the Commissioner is appointed then it will be



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helpful to arrive at just conclusion. Against which this revision is preferred.

7. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

8. Reading of the plaint petition, averments and the respondents counter it is seen that there was a family partition arrangement in the suit property. The case of the plaintiff is that by including the portion that was allotted to him in the family arrangement, the defendants 1 and 2 sold the property in favour of the third defendant. Now, the third defendant is making a trouble. Even though the sketch is annexed along with the plaint whether it is correct or not is a matter for trial. Moreover, which portion was allotted to which person is also a matter for trial. But, when the plaintiff says that by including his portion property was sold by the defendants 1 and 2 in favour of the third defendant, the lie of the properties will help the Court to arrive at a just conclusion. It will not amount to conclusion to evidence. So the discretion exercised by the trial Court does not require any interference



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by this Court.

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9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

25.03.2024

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
trp

To

The District Munsif Cum Judicial Magistrate Court, Gandharvakkottai.



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G.ILANGO VAN,J.

Trp

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