



C.R.P.(MD)No.3198 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.3198 of 2023
and
C.M.P.(MD)No.16475 of 2023

1.Kannan

2.Muthuvel

... Petitioners / Petitioners / Defendants

Vs.

Mayilraj

... Respondent / Respondent / Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the civil revision petition by setting aside the fair and decreetal order made in I.A.No.1 of 2021 in O.S.No.21 of 2021 dated 15.02.2022 on the file of the District Munsif Court, Andipatti.

For Petitioners : Mr.M.Thirunavukkarasu

For Respondent : Mr.P.Sivachandran



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ORDER

Heard the learned counsel on either side.

2. The defendants 1 & 2 in O.S.No.21 of 2021 on the file of the District Munsif Court, Andipatti are the revision petitioners herein. They filed I.A.No.1 of 2021 under Order 7 Rule 11 of C.P.C for rejection of the plaint. It was dismissed by the court below vide order dated 15.02.2022. Questioning the same, this civil revision petition came to be filed.

3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the grounds of revision and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. Per contra, the learned counsel appearing for the respondent submitted that the impugned order is well reasoned and that it does not warrant interference.

5. I carefully considered the rival contentions and went through the materials on record.



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6. It is not in dispute that one Arumugam Moopnar was allotted 87 cents of land in the partition deed dated 13.06.1968. He had disposed of 84 cents of land by selling the same to various parties. On 28.10.1974, he sold 2 ½ cents in favour of one Nachiarammal. The said Nachiarammal passed away in the year 2004. Her legal heirs sold the said 2 ½ cents in favour of one Rajeshwari vide sale deed dated 03.08.2011. Arumugam Moopnar passed away. His wife Pappa instituted O.S.No.24 of 2012 on the file of the District Munsif Court, Andipatti against the said Rajeshwari seeking declaration, recovery of possession and for mandatory injunction in respect of the remaining half cent of land. The suit was decreed on 09.08.2019. Rajeshwari sold her 2 ½ cents of land in favour of the respondent herein (Mayilraj) vide sale deed dated 13.03.2020. In the meanwhile, the decree holder had passed away and her legal heirs filed E.P.No.43 of 2019. It appears that even delivery was ordered but it could not be effected on account of the institution of O.S.No.21 of 2021 by Mayilraj.

7. The question that calls for consideration is whether Mayilraj could have instituted a separate suit instead of resolving the issue in E.P filed by the revision petitioners herein. Section 47 of C.P.C is clear. It states that all



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questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Admittedly, Mayilraj is claiming title only through Rajeshwari / defendant in O.S.No.24 of 2012. O.S.No.24 of 2012 was decreed as prayed for on 09.08.2019. It is stated that Mayilraj filed a third party appeal questioning the said decree and it was also dismissed. The said decree was put to execution in E.P.No.43 of 2019 on the file of the District Munsif Court, Andipatti. Mayilraj is of-course entitled to 2 ½ cents of land purchased by him from Rajeshwari. Rajeshwari traced her title through Nachiarammal who in turn had purchased the same from none other than Arumugam Moopanar himself.

8. The only question that calls for consideration is whether Mayilraj is retaining 2½ cents more than what is entitled to. This issue has to be necessarily resolved only in the aforesaid execution petition. Order 7 Rule 11(d) of C.P.C states that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. The plaint in O.S.No. 21 of 2021 itself refers to E.P.No.43 of 2019. Section 47 of C.P.C will clearly come into play.



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9. I will not fault the trial court. The plaintiffs had needlessly invoked the theory of res judicata and that is why, the court below was also misdirected. Now, that the facts are clear and I am satisfied that Section 47 will apply to the case on hand, I hold that the institution of O.S.No.21 of 2021 stood barred. In that view of the matter, the impugned order is set aside. The respondent is given liberty to file a proper petition before the executing court in E.P.No.43 of 2019. All the questions between Mayilraj on the one hand and the revision petitioners on the other will be determined by the Executing Court. I make it clear that I have not gone into the merits of the matter. All the contentions of the respondents are left open. The Civil Revision Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

06.09.2024

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

The District Munsif Court, Andipatti.



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G.R.SWAMINATHAN, J.

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