



C.R.P.(MD)No.3254 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.3254 of 2023

and

CMP (MD) No.16817 of 2023

R.Selvarajan : Petitioner/1st Respondent/
1st Defendant

Vs.

1.Vijay Arumugam
2.R.Jayabalan
3.R.Mohan
4.R.Karthikeyan @ Anandbabu
5.R.Padmaselvi @ Dhanalakshmi
6.Vinodkumar
7.Padmakanna

: Respondents 2 to 7/
Respondents 2 to 7/
Defendants 2 to 6

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 11/09/2023 made in IA No.3 of 2023 in OS No.22 of 2017 on the file of the Subordinate Court, Sivakasi and pass such further or other orders.

For Petitioners : Mr.S.I.Muthiah

For 1st respondent : Mr.S.Rajesh Saravanan

For R2, R4 and R5 : Mr.B.Praveen Kumar

For R3, R6 and R7 : Dispensed with



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O R D E R

WEB COPY This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 11/09/2023 passed in IA No.3 of 2023 in OS No.22 of 2017 by the Subordinate Court, Sivakasi.

2.The facts in brief:-

A suit in OS No.22 of 2017 was filed by the first respondent herein namely Vijay Arumugam seeking the relief of partition deed, dated 24/02/2010 is null and void and for consequentially granting partition in respect of the share of the plaintiff and for costs. The defendants entered appearance and pending further process, a petition was taken out by the plaintiff in IA No.3 of 2023 seeking an order to appointment of Commissioner subject to the first defendant for medical examination by the competent Medical Officer to assess the IQ with the following averments:-

"In the plaint, it has been pleaded by him that the first defendant is insanity. So, the partition deed is null and void. Unless the first defendant is subjected to medical examination, his mental capacity cannot be brought on record.



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3.The first defendant appeared through his Advocate and contested the matter that he is a sane person in full possession of mind.

4.Submitting that IA No.183 of 2017 was filed by the plaintiff to appoint a guardian for him. In that petition also, he appeared. The court enquired him in person and came to know that he is in full possession of mind. So that petition was closed. Without proper reason, this petition has been taken out.

5.After hearing both sides, the trial court passed the following order:-

"The first defendant was directed to be present before the court; The court may enquire with them to satisfy with the medical evidence. IA Nos.183 of 2017 and 184 of 2017 were not pressed by the plaintiff; The trial already commenced and posted for argument of the parties. At that time, this petition has been taken out.

6.It is further observed that for the second time, the first defendant was directed to be present before the court to assess his mental capacity. But that was refused by him and did not appear. So, the trial court has made



that adverse inference must be drawn against him.

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7. Aggrieved over the above said observation, this civil revision petition has been preferred by this petitioner.

8. Heard both sides.

9. This court is completely at loss to understand the observation made by the trial court. In that order itself, preliminary enquiry was made by the trial court. At the time of hearing IA Nos.183 and 184 of 2017 satisfied with the mental status. So those two applications came to be not pressed by the petitioner. On the very same ground, this petition has been taken out by the petitioner in the form of appointment of commissioner subject to conduct the medical examination.

10. Even though, it has been observed by the trial court that the petitioner cannot be subjected to medical examination without his will, but unnecessary observation has been made to the effect that adverse inference has to be drawn against him. This is highly objectionable observation. Now the trial commenced and posted for argument on both sides. Whether the first defendant



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entered into a partition deed and settlement deed in favour of the first respondent/plaintiff in the full mind and capacity must be decided on the basis of the available records. Before hearing the argument on both sides, the petition was taken purposefully. So the observation that has been made by the trial court is a premature one and no adverse inference can be drawn to the effect that the petitioner is not in full mental state. Exceeding the jurisdiction, the trial court has made this observation. The petition filed by the petitioner itself is misconceived one. The observation made by the trial court are all found to be illegal.

11. On that account, this civil revision petition is **disposed of**. The observation that has been made by the trial court against the petitioner is ordered to be not taken into account at that time of passing the judgment. The judgment must be pronounced on its own merit without making any reference to the order passed in IA No.3 of 2023. No costs. Consequently, connected Miscellaneous Petition is closed.

14/03/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Sub Court,
Sivakasi.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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