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C.R.P.No.2709 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No.2709 of 2023
and CMP.No.16708 of 2023

R.Shanthi

... Petitioner / Petitioner / 3rd Defendant

Vs.

1.P.Palanisamy

2.Rajeshwari

Muthyammal

3.P.Raji

... Respondents / Respondents /
Plaintiffs 1,2 & Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the docket order in I.A.No.2/2022 in I.A.No.1/2022 in O.S.No.505/2012 dated 24.03.2023 on the file of the District Munsif Court, Omalur.

For Petitioner : Mr.G.Surya Narayanan

For Respondents : Mr.D.Shivakumaran for R1 & R2
R3 - Served



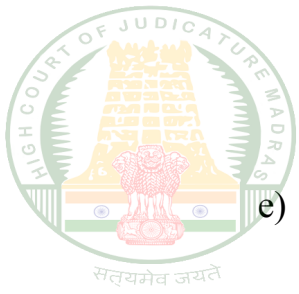
ORDER

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This revision is filed by the third defendant to set aside the docket order passed in I.A.No.2/2022 in I.A.No.1/2022 in O.S.No.505/2012 on the file of District Munsif Court, Omalur. Parties would be referred to in the same ranking before the trial Court.

2. The plaintiffs who are the respondents 1 and 2 herein has filed the suit in O.S.No.505/2012 on the file of District Munsif Court, Omalur, seeking following reliefs :

- a) declaring that the Family Settlement Cancellation Deed executed by the first defendant on 27.02.2012 as null and void;
- b) declaring that the sale deed executed by the first defendant in favour of the third defendant on 20.04.2012 as null and void;
- c) granting permanent injunction restraining the defendants and their men from in any way interfering with the plaintiffs' peaceful possession and enjoyment of the tiled and asbestos sheeted house covered in the II and III items of the suit properties;
- d) awarding costs of the suit; and



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e) granting such other relief or reliefs which are necessary under the circumstances of the case and thus render justice.

3. The suit property originally belonged to one Perumal Gounder. His wife is Muthayammal. The couple had two sons namely Palanisami and Raji. Their first son Palanisami had married one Rajeswari and their second son Raji had married Shanthi, the revision petitioner herein. The suit property is the joint family property and they were in joint possession and enjoyment of the same. On 20.7.1979, both the parents and the sons together entered into a Family Arrangement Settlement and the same was registered as Doc.No.1289/1979. By consent of the family members, the Panchayatdars have divided the joint family properties into 'A' and 'B' schedule properties, and 'B' schedule property was allotted and given possession to Raji absolutely. With regard to the 'A' schedule property, it was decided to be retained in possession of Perumal Gounder and wife and that they would cultivate and enjoy 'A' schedule property, without alienating or effecting any sale over the same. There was a thatched shed in the 'A' schedule property and it was agreed that Perumal Gounder, his wife Muthayammal and their second Raji would live in that house for five years,



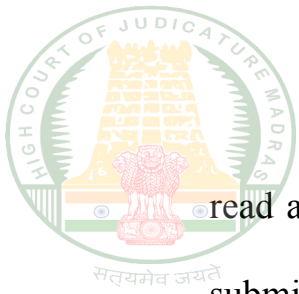
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in order to compensate the amount expended for the education of their first son Palanisami, after which period, they would vacate and hand over possession to Palanisami. Palanisami was an engineer by profession and he was employed in Salem. Their second son Raji who had been living with their parents, was cultivating the lands and was taking care of their parents. Be that as it may, the said Raji sold his absolute share 'B' schedule property to the wife of Palanisami, through a registered sale deed. On 29.03.1987, the possession of the thatched house was handed over to Palanisamy by Raji. After the demise of Perumal Gounder in the year 2003, their second son Raji with undue influence over his mother, had managed to get the family settlement deed dated 20.7.1979 cancelled vide Cancellation Deed dated 27.02.2012, and also executed a registered sale deed as concerning the 'A' schedule property for an extent of 30 cents in favour of Shanthi, the wife of Raji. Felt aggrieved, Palanisamy and his wife Rajeswari as plaintiffs had filed the above suit against Muthayammal, Raji and Shanthi as defendants, contending that the family settlement cancellation deed dated 27.02.2012 executed by Muthayammal, the first defendant, and the sale deed dated 20.04.2012 executed by Muthayammal in favour of Shanthi, third defendant are null and void.



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4. The revision petitioner who is the third defendant had adopted the written statement filed by the first defendant. Pending the suit, the said Muthayammal, the first defendant in the suit, who is the mother of the first plaintiff and first defendant had died on 16.03.2018, and therefore, the suit was amended by filing necessary application and subsequent to it, the plaintiffs have filed I.A.No.1383/2017 to receive the reply statement. In the reply statement, the plaintiffs have levelled various allegations against the third defendant, which had to be responded by the third defendant, failing which her rights would be curtailed. The third defendant apprehends that she may not be in a position to cross-examine the plaintiff side witness, if necessary pleadings were not substantiated by her. Therefore, she desired to file an additional written statement and was before the Court in I.A.No.1/2022, for receiving the additional written statement. The application in I.A.No.1/2022 was filed along with the additional written statement. This application was allowed by order dated 25.08.2022, on payment of costs of Rs.1,000/- on or before 13.09.2022. However, the third defendant would submit that she was not aware about this conditional order since in the e-Courts website, the daily order status on 25.08.2022 would



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read as "**I.A.1/2022 is pending call on 13.09.2022.**" The petitioner would submit that her counsel was under the impression that the said IA application was pending. However, on 23.09.2022, when the third defendant checked the e-courts website, it showed "**I.A.1/2022 is dismissed. For additional issues any, call on 13.10.2022.**"

5. It is only thereafter, the third defendant had come to know about the conditional order of payment of cost of Rs.1,000/- to be made on or before 13.09.2022. It is the contention of the third defendant that if she had been put on notice about the payment of cost, in time, she would have definitely paid the cost, but unfortunately, the third defendant had the knowledge about this conditional order only on 02.11.2022. In the said circumstances, the third defendant had taken out an application in I.A.No.2 of 2022 for condoning the delay and for extension of time in complying the conditional order.

6. The learned Judge had rejected the said application by order dated 24.03.2023, stating that sufficient cause has not been made out to consider the said application and further, objections have been raised by the



plaintiffs. Challenging the said dismissal, the third defendant is before this Court.

7. Heard the learned counsel on both sides. The third defendant / revision petitioner in the affidavit filed in support of I.A.No.2/2022 had set out in detail the reasons why the cost of Rs.1,000/-, ordered in I.A.No.1/2022, has not been paid by her and has clearly stated that the non-payment of cost was unintentional, but only out of ignorance of the order passed by the trial Court. The third defendant has in detail stated that she had been misled by the e-Courts order which did not reflect the conditional order. Therefore, the Court below ought to have considered the plea of the third respondent and could have verified the fact that whether the lapse have been on account of the e-Court entry that have not been uploaded properly, and allowed the said I.A., and had directed the parties to proceed with the suit.

8. Accordingly, the civil revision petition is allowed and the third defendant / revision petitioner is directed to pay the cost of Rs.1,000/- on or before 06.06.2025, and on payment of cost, the additional written statement



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shall be taken on file by the District Munsif Court, Omalur, and additional issues if any, shall be framed and the learned District Munsif, Omalur, is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes / No
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To:

1.The District Munsif
Omalur.

2.The Section Officer
VR Section
High Court, Madras.



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P.T. ASHA, J.

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