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C.R.P.No.5300 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5300 of 2024

M.Babu

.. Petitioner

Versus

1.K.Kavitha

2.A.Muthuraman

3.M/s.Equitas Small Finance Bank Limited,

Having its registered office at Phase-II,

4th Floor, Spencer Plaza, No.769,

Anna Salai, Chennai – 600 002.

And also Branch Office at Shop No.20,

1st Floor, Lennin Complex, Bharti School Lane,

Camp Road, Selaiyur, Chennai – 600 073 .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India as against the order maintainability by rejecting the plaint dated 06.06.2024 in unnumbered O.S.SR2767 of 2024 on the file of the District Munsif Court at Chengalpet.

For Petitioner : Mr.M.Thangadurai (No appearance)

ORDER

The civil revision petitioner is the plaintiff in the suit. He presented

O.S.SR2767 of 2024 for the following reliefs:



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“a) For a cancellation of document to cancel the impugned settlement deed executed by the plaintiff dated 29.08.2019 in favour of the defendant in respect of suit property registered as document No.10940 of 2019 on the file of the SRO, Guduvancherry.

b) For a permanent injunction restraining the defendant her men, agents, servants and any other person or persons claiming through her from in any manner alienating or encumbering suit property to any third party.”

2. The case of the plaintiff is that he purchased the suit property from one Kandhasamy on 28.08.2008. Subsequently, he had developed the property by constructing RCC building. Suddenly, his wife passed away leaving the plaintiff and his two daughters, namely, Lavanya and Kavitha as her legal representatives. The two daughters abandoned the plaintiff. Therefore, the plaintiff married one Rani and through her, he has a son by name Prasanth.

3. Apart from the suit schedule mentioned property, the plaintiff had purchased another property in the name of his first wife. After the demise of



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the first wife, the plaintiff and the first defendant herein executed a release deed in favour of the other daughter, Lavanya. The plaintiff had decided to retain this property for his son born to him through the second wife.

4. The first defendant had expressed her willingness to purchase the property from the plaintiff for a sum of Rs.10,00,000/-. She paid a sum of Rs.1,00,000/- as advance. This left out a sum of Rs.9,00,000/- for the first defendant to pay. She did not do so. However, exerting pressure on the plaintiff, she got a settlement deed executed in her favour in Document No.10940 of 2019 on the file of the SRO, Guduvancherry.

5. As the first defendant did not pay the balance of Rs.9,00,000/-, the plaintiff presented O.S.No.168 of 2020 on the file of the Principal District Judge at Chengalpet for a declaration that the settlement deed dated 28.08.2019 is null and void and for permanent injunction restraining the first defendant from alienating or encumbering the property. The said suit is pending.



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6. In the meantime, it came to the knowledge of the plaintiff that the first defendant had executed a sale deed in favour of the second defendant on 30.05.2022. On the same day, the second defendant had executed a mortgage deed in favour of the third defendant. Hence, he filed the present suit for the aforesaid reliefs.

7. At the stage of numbering, the learned District Munsif at Chengalpet had enquired the plaintiff whether O.S.No.168 of 2020 is pending. The counsel had responded in affirmative. Therefore, the learned Munsif came to a conclusion that if O.S.No.168 of 2020 is decreed, then the impugned documents would automatically fall. In case the suit is dismissed, then the documents would be upheld. Therefore, she permitted the plaintiff to amend the prayer in O.S.No.168 of 2020 and rejected O.S.SR2767 of 2024. Hence, this revision.

8. I have gone through the records.

9. This court in ***Selvaraj v. Koodankulam Nuclear Power Plant India Limited, (2021) 5 MLJ 467*** had held that it is not the duty of the court



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to don on itself the role of the defendant and act as such at the time of numbering of the plaint. The court, at the time of numbering of the plaint, is only exercising ministerial powers. No law empowers a court to pass a judicial order at that stage. The Hon'ble Mr.Justice N.Seshasayee further held that the matters, which would have to appropriately be addressed on the judicial side, should not be considered at the time of numbering of the plaint. I should add that in terms of Order VII Rule 9 of the Code of Civil Procedure, the judicial journey of the suit commences when the suit is admitted under the said provision. Till then, the suit has to be dealt with on the ministerial side. Therefore, the order of the learned judge in passing an order on the merits of the case at the time of numbering falls foul with the view taken by this Court in the aforesaid judgment.

9. Apart from that, *lis pendens* under Section 52 of the Transfer of Property Act holds that documents executed pending a litigation are bound by the result in the suit. Even if O.S.No.168 of 2020 were to be decreed, the documents executed by the first defendant in favour of the second defendant and the second defendant in favour of the third defendant would continue to be on record on the file of the Sub Registrar. The plaintiff, by way of



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abundant caution, has come up with the present suit in order to remove the said documents from the file of the Sub Registrar.

10. The learned District Munsif's view on the application under Section 52 of the Transfer of Property Act is correct, but to hold that the remedy is only to file an amendment application in the pending suit, in my view, is erroneous. A party is entitled to either amend the plaint or file a fresh suit. It is not for the Court to state as to how the litigation strategy of a party should be evolved.

11. In the light of the above discussion, the order passed by the learned District Munsif, Chengalpet in O.S.SR2767 of 2024 dated 06.06.2024 is set aside.

12. There shall be a direction to the learned District Munsif, Chengalpet to number the plaint. After numbering the plaint, the learned District Munsif shall transfer the said suit to the file of the Principal District Judge, Chengalpet. The learned Principal District Judge, on receipt of the records from the learned District Munsif, shall renumber the suit forthwith, issue summons to the defendant, receive their statements and try the same along with O.S.No.168 of 2020.



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13. With the above directions, the civil revision petition stands allowed. No costs.

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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

To

1.The District Munsif Court at Chengalpet.

2.The Principal District Judge, Chengalpet.



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V.LAKSHMINARAYANAN, J.

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