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CRP NO.518 OF 2023**IN THE HIGH COURT OF JUDICATURE AT MADRAS****ORDER RESERVED ON : 17 / 12 / 2025****ORDER PRONOUNCED ON : 06 / 01 / 2026****CORAM:****THE HONOURABLE MR. JUSTICE R. SAKTHIVEL**

CRP NO.518 OF 2023
AND
CMP NO.4198 OF 2023

Santhi Dhayakaran

...

Petitioner / Petitioner /
1st Defendant

Versus

V.Narendran

...

Respondent / Respondent /
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950 praying to set aside the Fair and Decretal Order dated January 23, 2023 passed in I.A.No.1 of 2022 in O.S.No.233 of 2022 by the I Additional District and Sessions Court, Tiruppur, by allowing this Civil Revision Petition.

For Petitioner : Mr.A.Sheik Peer

For Respondent : Mr.Siddharth Sridhar
for Mr.R.Bharath Kumar

ORDER



Feeling aggrieved by the Dismissal Order dated January 23, 2023 passed by 'the I Additional District and Sessions Court, Tiruppur' ['Trial Court' for short] in I.A.No.1 of 2022 in O.S.No.233 of 2022, the Petitioner therein has preferred this Civil Revision Petition under Article 227 of the Constitution of India, 1950.

2. The Revision Petitioner herein is the first Defendant and the Respondent herein is the Plaintiff in the Original Suit in O.S.No.233 of 2022 on the file of the Trial Court. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. The case of the Plaintiff is that the Suit Property was owned by one Muthusamy vide Sale Deed dated January 26, 1972. He married one Nagammal as his first wife through whom the second Defendant namely Sivaramakrishnan was born. Muthusamy during his lifetime married one Tara Devi as his second wife, through whom, no child was born.

3.1. The Plaintiff and the first Defendant are the biological son and daughter of one Babu Naidu and Rajeswari. Said Tara Devi's



sister - Renugadevi adopted the Plaintiff while Tara Devi adopted the first defendant, both by way of customary adoption.

3.2. During his lifetime, Muthusamy executed a registered Will dated June 9, 1993 and thereby created a life estate in favour of his second wife - Tara Devi and leaving vested remainder to the Plaintiff and the first Defendant. Hence, after the demise of Tara Devi, the Plaintiff and the first Defendant are entitled equal share.

3.3. In these circumstances, the first Defendant falsely obtained a Legal Heirship Certificate and got Release Deed dated June 14, 2013 from Tara Devi. Further, The first Defendant along with her children executed Sale Deeds dated June 17, 2016 and March 12, 2020 in favour of the Defendants 5 and 6 and thereby, sold the entire Suit Property. According to the Plaintiff, Tara Devi has no right to execute the said Release Deed in favour of the first Defendant. Further, the first Defendant and her children have no right to execute the Sale Deed in favour of Defendants 5 and 6. The Sale Deed would not bind the Plaintiff. Accordingly, the Plaintiff filed the Original Suit for partition, declaration that the first defendant is not a daughter of deceased - Muthusamy, and declaration that the Release Deed and Sale Deeds are null and void.



4. The First Defendant entered appearance through his Counsel and filed an Interlocutory Application under Order VII Rule 11 of 'the Code of Civil Procedure, 1908' ('CPC' for short) seeking rejection of the plaint on the ground that the suit property was owned by one Muthusamy by virtue of a Sale Deed dated January 26, 1972. Muthusamy passed away intestate, leaving behind his wife, Tara Devi, and the first Defendant as his legal heirs. Tara Devi executed a Release Deed in favour of the first Defendant and mutation of revenue records was also effected. The first Defendant along with her children executed Sale Deeds dated June 17, 2016 and March 12, 2020 in favour of the Defendants 5 and 6 and thereby, sold the entire Suit Property. Hence, the suit property is now not available for partition. Further, the Suit is not properly valued and the Court Fee paid is incorrect. Therefore, the Suit is not maintainable and the plaint is liable to be rejected. Accordingly, the first Defendant prayed for rejection of the plaint.

5. The Plaintiff as Respondent in that Application filed a counter reiterating the plaint averments. In addition it was stated that the plaintiff is not a party to Release Deed and the Sale Deeds and hence, the same will not bind the plaintiff and they need not be set aside. The Suit is properly valued and that the first Defendant has not made out a case under



Order VII Rule 11(d) of the CPC. The plaintiff will prove his case during trial. Stating so, the plaintiff prayed for dismissal of the Application.

6. The Trial Court, after hearing both sides, concluded that the Plaintiff claims right over the suit property through the Registered Will dated June 9, 1993. The plaintiff is not a party to the said Release Deed and the Sale Deeds. Hence, the Suit valuation and the Court Fee paid are correct. Further, the plaint discloses cause of action. Therefore, the first defendant does not make out a case under Order VII Rule 11(d) of CPC. Accordingly, the Trial Court dismissed the Application filed under Order VII Rule 11 of CPC.

7. Feeling aggrieved, the first defendant has filed this Civil Revision Petition.

8. Learned Counsel for the revision petitioner / petitioner / first defendant would reiterate the averments made in the affidavit filed in support of this Civil Revision Petition and submit that the first defendant sold off the suit property to defendants 5 and 6 much prior to the filing of the Suit i.e., on March 12, 2020. The suit property is now not available for



partition and hence, there is no cause of action for the plaintiff. The Suit valuation and the Court Fee paid is correct. The Trial Court failed to appreciate the facts and circumstances of this case in the right perspective and erred in dismissing the Interlocutory Application. Accordingly, he would pray to allow the Civil Revision Petition.

9. Per contra, the learned Counsel appearing for the respondent / respondent / plaintiff would submit that the plaintiff has clearly narrated the cause of action for the Suit in Complaint Paragraph No.16. Further, plaintiff is not a party to the Release Deed and the Sale Deeds. Further, the alleged Releasor and Vendors had no right to execute the documents including the plaintiff's share in the suit property. Hence, the said documents are not binding on the plaintiff and his lawful share. The plaintiff can simply ignore the same. The Suit is filed within 3 years from the date of knowledge about the alleged documents. The first defendant has not made out a case under Order VII Rule 11 of CPC. The Trial Court rightly dismissed the Interlocutory Application filed by the first defendant. Accordingly, he would pray to dismiss the Civil Revision Petition. The learned Counsel would place reliance on the decision of the Hon'ble Apex Court in ***Hussain Ahmed Choudhury -vs- Habibur Rahman***, reported in ***2025 SCC OnLine SC 892***, in support of their contentions.



10. This Court has heard the submissions made on either side and perused the materials available on record.

11. There is no dispute with the fact that the suit property originally belonged to Muthusamy vide Sale Deed dated January 26, 1972. According to the plaintiff, said Muthusamy's first wife is Nagammal and second wife is Tara Devi. The second defendant - Sivaramakrishnan is the son born through the first wife. No child was born through the second wife. The Plaintiff is claiming though the registered Will dated June 9, 1993, allegedly executed by Muthusamy giving life interest over the suit property to Tara Devi and leaving the vested remainder for the plaintiff and first defendant. Even according to the plaintiff, the second marriage of Muthusamy is not recognised by law. In these circumstances, the first defendant ought to have added the second defendant in the Suit namely Sivaramakrishnan, as a party to the Interlocutory Application, as he *qua* natural legal heir is the competent person to deny the said Will. But the first defendant failed to do so. Further, the Suit is one for declaration in respect of the Release Deed dated June 14, 2013 and the Sale Deeds dated June 17, 2016 and March 12, 2020. The said Release Deed is allegedly executed by Tara Devi in favour of first defendant and in turn, the first defendant along with her children executed the said Sale Deeds in favour



of defendants 5 and 6. Only when the Will is proved, the plaintiff and the first defendant will get right over the suit property. Only then the question about the Release Deed and the Sale Deeds would arise. Even when assuming that the Will is proved, Tara Devi was entitled to execute Release Deed only in respect of her life estate; she had no right to absolutely release the suit property in favour of the first defendant. In any case, if the Will is proved, the plaintiff would be entitled to $\frac{1}{2}$ share and the first defendant would be entitled to $\frac{1}{2}$ share. Hence, while assuming that the Will is true, the Sale Deeds executed by the first defendant along with her children in respect of the entire suit property would not in any manner bind the plaintiff's $\frac{1}{2}$ share. Therefore, this Court is of the view that the plaintiff rightly valued the Suit under Section 25 (d) [relief of declaration] and Section 37 (2) [relief of partition] of the Tamil Nadu Court-Fee and Suits Valuation Act, 1955.

12. At this juncture, this Court deems fit to cite the Judgment of Hon'ble Supreme Court in *Hussain Ahmed Choudhury's Case* relied on by the learned Counsel for the Respondent, wherein after referring to *Suhrid Singh alias Sardool Singh -vs- Randhir Singh* [(2010) 12 SCC 112] and two old and erudite Judgments of this Court, it was held as follows:

"29. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed under Section



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31 of the Act, 1963. But if a non-executant seeks annulment of a deed, he has to only seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' — two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non est/illegal and he is not bound by it. In essence, both may be suing to have the deed set aside or declared as non-binding. [See : *Suhrid Singh alias Sardool Singh v. Randhir Singh*, (2010) 12 SCC 112]

30. As observed aforesaid, a plaintiff who is not a party to a decree or a document, is not obligated to sue for its cancellation. This is because such an instrument would neither be likely to affect the title of the plaintiff nor be binding on him. We have to our advantage two very old erudite judgments of the Madras High Court and one of the Privy Council on the subject.

31. In *Unni v. Kunchi Amma*, 1890 SCC OnLine Mad 5, the legal position has been thus explained:

“If a person not having authority to execute a deed or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it, to sue to set it aside for it cannot be used against them. They may treat it as non-existent and sue for



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their right as if it did not exist.”

(Emphasis supplied)

32. *The same principle has been distinctly laid down by the Privy Council in Bijoy Gopal Mukerji v. Krishna Mahishi Debi, 1907 SCC OnLine PC 1, where the jural basis underlying such transactions was pointed out. In that case, the reversioner sued for a declaration that a lease granted by the widow of the last male owner was not binding on him and also for khas possession. It was objected that the omission to set aside the lease by a suit instituted within the time limit prescribed by Article 91 of the Indian Limitation Act, 1877 was fatal to the suit. The following observations which are equally applicable to the case at hand, are apposite:*

“A Hindu widow is not a tenant for life, but is owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate it subject to certain conditions being complied with. Her alienation is not, therefore, absolutely void, but it is prima facie voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure treat it as a nullity without the intervention of any Court, and he shows his election to do the latter by commencing an action to recover possession of the property. There is, in fact, nothing for the Court either to set aside or cancel as a condition precedent to the right of action of the reversionary heir. It is true that the appellants prayed by their plaint for a declaration that the ijara was inoperative as against them, as leading up to their



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prayer for delivery to them of khas possession. But it was not necessary for them to do so, and they might have merely claimed possession, leaving it to the defendants to plead and (if they could) prove the circumstances, which they relied on, for showing that the ijara of any derivative dealings with the property were not in fact voidable, but were binding on the reversionary heirs.”

33. *In fact, it is logically impossible for a person who is not a party to a document or to a decree to ask for its cancellation. This is clearly explained by Wadsworth, J., in the decision rendered in Vellayya Konar (Died) v. Ramaswami Konar, 1939 SCC OnLine Mad 149, thus:*

“When, the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void ‘in toto’, and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for declaration. But when he is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or that deed cancelled ‘in toto’. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore in order to clear the way with a view to establish his title, is to get a declaration that the decree or deed is invalid so far as he himself is



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concerned and he must therefore sue for such a declaration and not for the cancellation of the decree or deed.”

(Emphasis supplied)”

13. Needless to mention that the alleged Release Deed and the Sale Deeds binds the second defendant only when the Suit Will is proved.

14. Further, this Court has perused the plaint and plaint averments. A bare reading of the plaint and the plaint averments would clearly show that the plaint discloses a cause of action and that triable issues arise. The questions as to whether Muthusamy executed a registered Will dated June 9, 1993, thereby creating a life estate with the vested remainder with the plaintiff and the first defendant and whether Muthusamy had the right to execute the Will, are all triable issues that can be decided only at the time of final Judgment after completion of trials. In these circumstances, the first Defendant does not make out any case under Order VII Rule 11 of CPC to reject the plaint. The Trial Court rightly appreciated the facts and circumstances of the case and correctly dismissed the Interlocutory Application filed under Order VII Rule 11 of

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CPC. There is no irregularity or illegality in the said order. Therefore, the Civil Revision Petition lacks merit and is liable to be dismissed.

15. Accordingly, the Civil Revision Petition is dismissed.

Considering the facts and circumstances, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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PRE-DELIVERY ORDER MADE IN

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