



C.R.P(MD).No.920 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.920 of 2023

and

CMP(MD)No.4252 of 2023

Kaliammal Palaniappan Educational Trust,
Represented by its Trustee cum Treasurer
S.Muthusamy
Having office at No.91, Nathamedu,
Veranampalayam Post,
Paramathi Velur Taluk,
Makakkal District.

... Revision Petitioner/4th Respondent/
4th Respondent

Vs.

1.Jegadheesh
2.Santhi
3.Kaliappa Gounder
4.Vijayalakshmi
5.Krishnaveni
6.Natarajan
7.A.S.Ravichandran

... Respondents 3 to 7/Respondents 1,
2, 5 to 7

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set-aside the fair and decreetal order passed in I.A.No.4 of 2021 in A.S.No.9 of 2019 dated 09.01.2023 on the file of the Principal District Court, Karur.

For petitioner : Mr.K.Suresh



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ORDER

This petition has been filed to set-aside set-aside the fair and decreetal order passed in I.A.No.4 of 2021 in A.S.No.9 of 2019 dated 09.01.2023 on the file of the Principal District Court, Karur. By the impugned order dated 09.01.2023 the Principal District Court, Karur, has allowed I.A.No.4 of 2021 in A.S.No.9 of 2019.

2.Relevant portion of the impugned order reads as under:-

“18.மனுதாரர்கள் தரப்பில் 1ம் வாதி இளவராக இருந்து விசாரணை நீதிமன்றத்தில் வழக்கு தாக்கல் செய்துள்ளார் எனவும், இளவர் 1ம் மனுதாரர் பெயரில் 3ம் பிரதிவாதி காப்பாளர் என்ற நிலையில் ஏற்படுத்திய கிரைய ஆவணங்களை ரத்து செய்வதற்கு இளவர் வயது முப்பு அடைந்த தேதியிலிருந்து முன்று வருடத்திற்குள் பரிகாரம் கேட்டு வழக்கு தாக்கல் செய்வதற்கு காலவரையறை சட்டப்படி கால அவகாசம் உள்ளது எனவும், அந்த வகையில் இளவர் 1ம் மனுதாரர் 06.04.2002 ஆம் தேதி பிறந்துள்ளார் எனவும், அவர் 06.04.2020 ஆம் தேதி வயது முப்பு அடைந்துள்ளார் எனவும், வயது முப்பு அடைந்த தேதியிலிருந்து முன்று வருட காலமான 06.04.2023 வரை கால அவகாசம் உள்ளது எனவும், இளவர் 1ம் வாதிக்காக 3ம் பிரதிவாதி ஏற்படுத்தியுள்ள கிரைய ஆவணங்களை ரத்து செய்ய பரிகாரம் கோருவதற்கான காலவரையறை முடிவடைவதற்கு முன்பே மனுதாரர்கள் இம்மனுவை தாக்கல் செய்துள்ளனர் எனவும், இளவர் 1ம் வாதியுடைய உரிமையை பாதுகாப்பதற்கு வழக்குரையை சீர்திருத்தம் செய்வதற்கு அனுமதி அளிக்கப்பட வேண்டுமென மனுதாரர்கள் தரப்பில் வாதம் வைக்கப்பட்டுள்ளது.”

3.The petitioner is the fourth defendant in O.S.No.308 of 2008 on the file of the Principal Sub Court, Karur. The above suit was filed by the respondents 1 and 2 herein for partition of the suit schedule property.



4.The specific case of the petitioner is that the suit schedule properties were sold to the petitioner by three different sale deeds dated 09.06.2006, 16.08.2008 and 16.12.2008 by the third respondent Kaliappa Gounder. Further case of the petitioner is that the suit that was instituted in the year 2008 before the Principal Sub Court, Karur.

5.At that time, when the first respondent was at minor and had not attained majority. He was represented by the second respondent, who is none other than the mother of the first respondent. It is submitted that the suit itself was rightly dismissed by the Trial Court by a judgment and decree dated 13.12.2018 by the Principal Sub Court, Karur. However, only after filing A.S.No.9 of 2019, I.A.No.4 of 2021 filed for adding a prayer to declare the sale deeds executed in favour of the petitioner as null and void.

6.The learned counsel for the petitioner would submit that the First Appellate Court has committed a grave error in allowing the application for amendment under Order 6 Rule 17 at the Appellate stage in as much as the limitation for declaring the sale deeds as null and void executed during 2000 - 2002 would be time barred. Specifically reference is made to Section 6 of the Limitation Act and Article 59(1)(2) of the Limitation Act.



7.The first respondent would have been entitled to ask such amendment within three years from the date of knowledge. No such application was filed earlier. It is submitted that in the case, the suit was filed in the year 2008 and the interest of the first respondent was represented by his mother namely, the second respondent herein in O.S.No.308 of 2008. It is submitted that the Trial Court has committed a grave error.

8.I have considered the argument advanced by the learned counsel for the petitioner.

9.No doubt the suit was filed in the year 2008 when the first respondent was minor. The property in question appears to have sold to the petitioner by the third respondent along with the father of the first respondent/husband of the second respondent by three separate sale deeds dated 09.06.2006, 16.08.2008 and 16.12.2008. The ostensible reason for selling the property was family needs and consideration.

10.Though, the suit was in the year 2008 filed for partition, the first respondent independently has right to question the sale deed executed in favour of the petitioner herein on attaining majority. I am therefore not



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inclined to interfere with the impugned order dated 09.01.2023 of the first Appellate Court in I.A.No.4 of 2021. The sale deed, which is executed as earlier as 09.06.2006, 16.08.2008 & 16.12.2008 have not been set aside. All the issues relating to limitation including Article 59 & 60 of the Limitation act, are left open to canvass by the petitioner at the time of Appeal No.9 of 2019.

11.With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

03.04.2023

NCC : Yes/No
Index : Yes/No
Internet:Yes/No
dss

To

- 1.The Principal District Court,
Karur.
- 2.The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court, Madurai.



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C.SARAVANAN,J.

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