



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.2249 of 2016

and

C.M.P. (MD) No.10387 of 2016

1.Sadachi
2.Angammal @ Angalaeswari ...Petitioners/Respondents/
plaintiffs

-vs-

1.Panchavarnam
2.K.Maheswari
3.K.Kumar ... Respondents/Respondents
/ Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and Decreetal order dated 07.10.2015 made in I.A.No.221 of 2013 in O.S.No.19 of 2011 on the file of the Sub Court, Aruppukkottai.

For Petitioner : Mr.PT.S.Narendera vasan
For R1 : Mr.R.Ramadurai
For R2 and R3 : No Appearance

ORDER

O.S.No.19 of 2011 was filed before the Sub Court, Aruppukkottai by the revision petitioners seeking relief of partition and permanent injunction. The respondents herein had filed their written statement claiming that the second revision petitioner herein namely Angammal @ Angalaeswari had executed a release deed as early as on 15.07.1983 through a registered document.

2.The respondents herein filed I.A.No.221 of 2013 for referring the said document that was marked as Ex.B7 for forensic opinion. The revision petitioner filed their counter affidavit, in which, it was categorically mentioned that on 15.07.1983, the second plaintiff would have been a minor girl aged about 10 years. The learned counsel appearing for the revision petitioner took this Court to paragraph 5 of the counter affidavit filed in I.A.221 of 2018, in which this point has been clearly and unambiguously pleaded. It appears that this assertion made in the counter affidavit that the second plaintiff was minor on the date of alleged execution of said document has not been refuted by the defendants. The Court below by order dated 07.10.2015 allowed the IA. Hence, this Civil Revision Petition has been filed.



3. Heard the learned counsel on either side.

4. The point regarding age of the second plaintiff was referred to while extracting the counter averments in the impugned order. But then strangely there is no discussion regarding this contention by the trial Judge. If the second plaintiff was minor on the relevant date, she could not have executed the document in question and even if she had executed, the same is void. But, the Court below went into other aspects and allowed the IA. It is clearly wrong and unsustainable in law.

5. In this view of the matter, the impugned order is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

The Subordinate Judge, Aruppukkottai.

+1CC to Mr.PT.S.Narendera vasan, Advocate, SR.No.78739

+1CC to Mr.R.RAMADURAI, Advocate, SR.No.78571

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