

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(P.D).No.1053 of 2019

and

CMP.No.6962 of 2019

S.J.Devaraj

... Petitioner

-VS-

1. Shanthi
2. Subbulakshmi
3. P. Velumani

... Respondents

Prayer: Petition under section 115 of the Code of Civil Procedure praying to set aside the fair and decreetal order of the learned Subordinate Judge, Palladam, dated 7.2.2019 passed in I.A.No.52 of 2019 in O.S.No.428 of 2018.

For Petitioner : Mr. J. Antony Jesus

ORDER

WEB COPY

The above Civil Revision Petition is filed challenging the order of dismissal by the learned Subordinate Judge, Palladam of an application moved by the 3rd defendant for rejecting the plaint filed by the respondents 1 and 2 in O.S.No.428 of 2018.

2. The respondents 1 and 2 had filed a suit for partition of their 2/4 share in the suit property and for declaring the sale deed executed in favour of the 3rd defendant as null and void. From the plaint pleadings, it appears that the plaintiffs have stated that they came to know about the sale of the year 1992 only in September 2005 when they pressurised the first defendant for partition of the suit properties. When the panchayat head made enquiries with the father they were informed that the suit property has been sold in the year 1992. The 3rd defendant, without filing a written statement, has straight away moved an application to reject the plaint on the ground that the suit is hit by limitation and that the Amendment Act of 2015 would not apply in the case of the plaintiffs.

3. As regards the issue of limitation, it is the case of the 3rd defendant in the affidavit filed in support of the Petition as well as the arguments submitted by the learned counsel before this Court in the present Civil Revision Petition that the sale was for the benefit of the minors and that they ought to have filed an application to set aside the sale within a period of three (3) years from the time they attained majority. A copy of the deed was produced for scrutiny of this Court in which it is seen that they are not parties to the said sale deed on the other hand only the second defendant/son is the party. Therefore

these are issues which have to be settled by the trial and the defendant cannot adopt a short cut method by filing a Petition for rejecting the Plaint at the very first instance. It is time and again held that in the case of rejection of plaint, the Court should only be guided by the averments in the plaint and documents filed in support of the plaint. A reading of the plaint makes out a cause of action and therefore the Court below has rightly rejected the application. I find no infirmity in the order passed by the learned Subordinate Judge, Palladam. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

21.03.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order

mrn

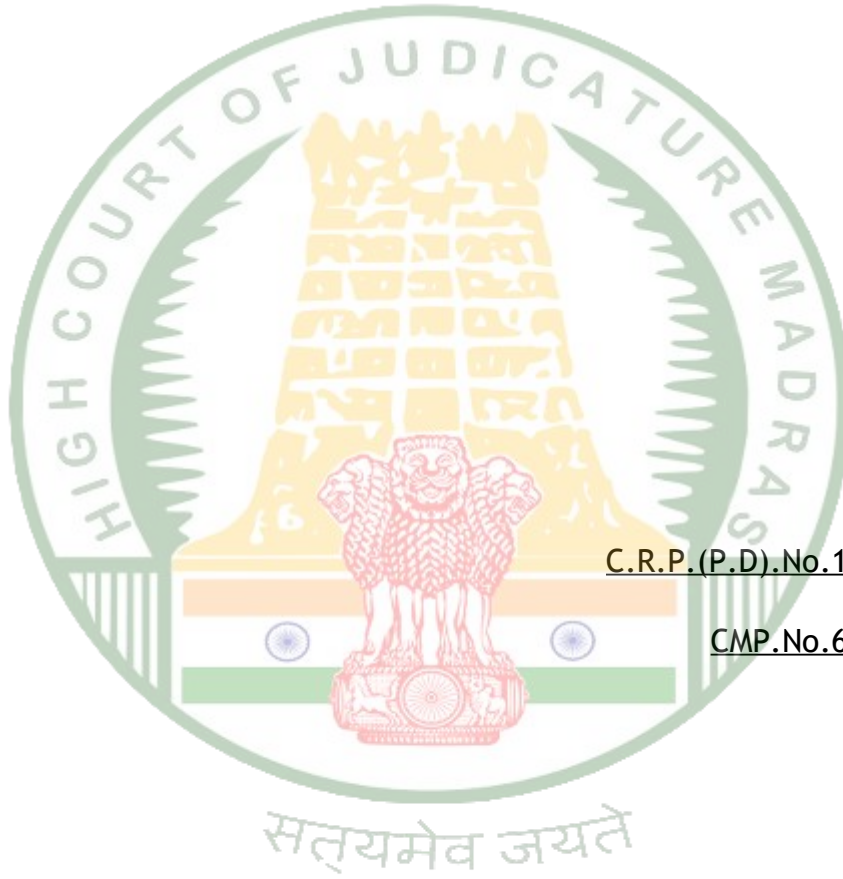
To
The Subordinate Judge,
Palladam.

सत्यमेव जयते

WEB COPY

P.T. ASHA, J.

mrn



C.R.P.(P.D).No.1053 of 2019
and
CMP.No.6962 of 2019

WEB COPY

21.03.2019