

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P.No. 3349 of 2019

1. Bagath Sheriff
2. Aleem Sheriff
3. M,Nayaz Sheriff

... Petitioners

-Vs-

1. K.S.Sivarudraiah
2. C.Sambangi Ramaiah
3. N.Seluvappa
4. B.Santhappa
5. C.Sivappa
6. Akkaiamma
7. Venkattaramanappa
8. K.N.Kumar
9. K.S.Harish
10. K.A.Kalyani

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India praying to set aside the order of the learned District Munsif-Cum-Judicial Magistrate of Denkanikottai dated 09.04.2019 rejecting the plaint in the unnumbered suit.

For Petitioners : Mr. J.Hariharan

O R D E R

This Civil Revision Petition has been filed against the Docket order passed by the learned District Munsif-Cum-Judicial Magistrate of Denkanikottai, in unnumbered O.S.No. NIL/2019, by order dated 09.04.2019.

2. The said suit was filed by the revision petitioners/plaintiffs for declaring the title of the suit property in favour of the plaintiffs and to grant permanent injunction, to declare the gift settlement deed dated 28.09.1961, the sale deeds dated 01.10.1993 and 29.11.2006 respectively, as void.

3. The said suit, at SR stage, without getting numbered, was rejected by the rejection order dated 09.04.2019, on the ground that, the suit has been laid beyond limitation period, as according to the learned Judge, the plaintiffs had knowledge about the patta issued in favour of the defendants and

therefore, from the date of issuance of patta or date of knowledge of issuance of the patta, the limitation would start and therefore, within the limitation period since the suit has not been filed, it was rejected.

4. I have heard Mr.V.Nicholas, the learned counsel appearing for the petitioner and perused the materials placed before this Court.

5. On perusal of the plaint, it comes to know that the suit has been filed for declaring the title of the suit property in favour of the petitioners and also to cancel the gift and sale deeds.

6. In respect of declaratory relief, the plaintiffs laid the suit stating that, the suit property was inherited by the plaintiffs from their grand father and thereafter from the father of the plaintiffs and the subsequent development taken place does not known to them and therefore, the suit is well within the limitation.

7. Moreover, the issue with regard to the limitation can be agitated as the preliminary issue as the suit is unnumbered. As far as the relief sought for in the plaint is concerned, since it is a declaratory relief to declare the title over the suit property, issuance of patta in favour of the defendant or any third party may not be a conclusive proof to decide the title and therefore, that can only be an issue to be decided in the suit and that cannot stand in the way in numbering the suit and in that view of the matter, I am of the considered view that the reason cited by the learned Judge may not be justifiable. Therefore, this Civil Revision Petition is to be allowed.

8. In the result, the Civil Revision Petition is allowed and the following direction is given to the Court below;

(1). To entertain the suit, if it is otherwise in order and proceed with in accordance with law.

9. With these directions, the Civil Revision Petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

kst / kmm

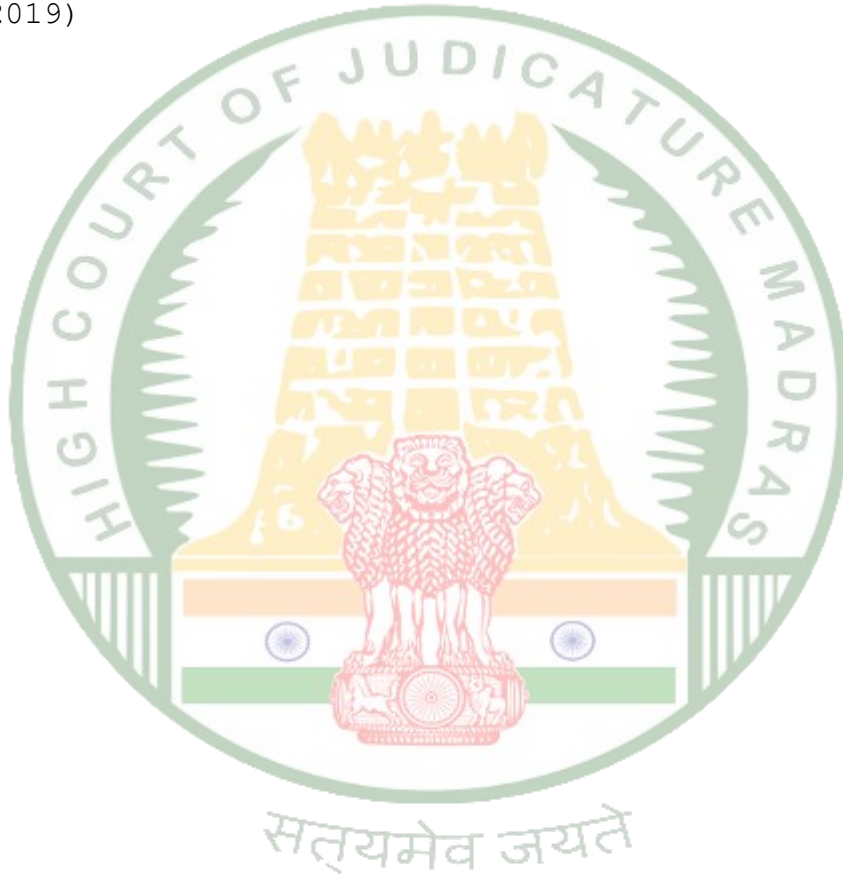
To

The District Munsif-Cum-Judicial Magistrate,
Denkanikottai.

+1cc to Mr.Nicholas, Advocate, S.R.No. 86978

C.R.P.No. 3349 of 2019

MG (CO)
GN (22/11/2019)



WEB COPY