



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **20.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

**CRP (PD) (MD)No.671 of 2019**  
**and CMP(MD)No.3652 of 2019**

WEB COPY

1. T.A.Anvar Ushen
  2. T.A.Abu Bakkar Sihique
  3. T.A.Rijuna Begam
  4. T.A.Najma Begam
- ... Petitioners/Plaintiff

versus

1. The Chief Executive Officer,  
Tamil Nadu Wakf Board,  
Chennai.
  2. Khadhar Meera,  
Present Trustee of Ilayankudi Melapallivasal  
Ilayankudi Town,  
Sivagangai District.
  3. Firoza Beevi
  4. Shanal
  5. Shelina
  6. Sahrin
  7. Mohamed Barista
  8. The Sub Registrar,  
Mylapore, Chennai.
- ... Respondents/Defendants

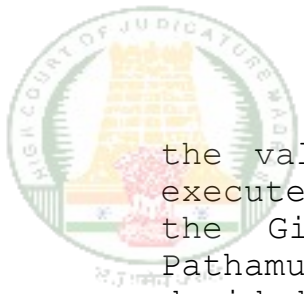
Civil Revision Petition filed under Article 227 of Constitution of India, against the return order dated 21.02.2019 in unnumbered suit, on the file of the Subordinate Court, Sivagangai.

For Petitioners : M/s.R.Maheswaran  
For R1 : Mr.S.A.S Allavudeen

**ORDER**

This Civil Revision Petition has been filed against the return order dated 21.02.2019 in unnumbered suit, on the file of the Subordinate Court, Sivagangai.

2. The revision petitioners herein filed a suit before the Subordinate Court, Sivagangai, for the relief of declaration that the Gift Settlement Deed dated 13.07.2015 is null and void and also for partition, claiming 1/3<sup>rd</sup> share in the suit property. However, the Court below rejected the plaint stating as follows:



"The learned counsel for the plaintiffs would submit the validity of the Gift Settlement Deed dated 16.08.1954 executed by Mohamed Hasan in favour of Pathamuthu Ammal and the Gift Settlement Deed dated 14.03.1960 executed by Pathamuthu Ammal in favour of her grandchildren would be decided by the Hon'ble High Court in S.A(MD)No.50478 of 2013 which is still pending and therefore, the validity of those deeds cannot be agitated in this suit by the plaintiff. In view of the said stand of the learned counsel for the plaintiffs, in the opinion of this Court, if those Gift Deeds are valid, the plaintiffs have no right in the suit property and they have no occasion to file this case at all. Therefore, unless and until the validity of those Gift Deeds is decided by the Hon'ble High Court in the said S.A.(MD) No.50478 of 2013 wherein the plaintiffs are also party, this suit could not be entertained by this Court. Hence, this suit is not maintainable and the plaint is liable to be rejected."

Challenging the same, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioners submitted that originally, one Oli Mohamed and P.A.Sagara Beevi filed a suit in OS No.41 of 2006, before the learned District Munsif cum Judicial Magistrate, Ilayangudi, for permanent injunction restraining the defendants/revision petitioners herein from causing any disturbance over the suit schedule property. By Judgment and Decree dated 07.01.2009, the said suit was decreed as prayed for. Aggrieved over the same, the revision petitioners preferred an appeal in A.S.No.18 of 2009 before the Sub Court, Sivagangai, which was also dismissed. Challenging the same, the revision petitioners herein filed an appeal in S.A(MD)No.50478 of 2013 before this Court and the same is also pending. The present has been filed to declare the Gift Settlement Deed dated 13.07.2015 executed by the 7<sup>th</sup> defendant/7<sup>th</sup> respondent herein on behalf of 3<sup>rd</sup> to 6<sup>th</sup> defendants/3<sup>rd</sup> to 6<sup>th</sup> respondents herein in favour of 2<sup>nd</sup> defendant/2<sup>nd</sup> respondent as null and void and also for partition. It is submitted that the issue with regard to the possessory right over the suit can be decided only by the Court below and therefore, the present suit is maintainable. However, without considering those aspects, the Court below has rejected the plaint and refused to number the same.

4. The learned counsel appearing for the first respondent submitted that Gift Settlement Deed dated 16.08.1954 executed by Mohamed Hasan in favour of Pathamuthu Ammal and the Gift Settlement Deed dated 14.03.1960 executed by Pathamuthu Ammal in favour of her grandchildren have not been cancelled. Therefore, the plaintiffs/revision petitioners herein have no right over the suit property.



5. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the first respondent.

6. Admittedly, the previous suit was filed for permanent injunction against the revision petitioners and the said issue is pending before this Court in S.A.(MD)No.50478 of 2013. Whereas the present suit is filed for declaration of gift settlement deed dated 13.07.2015 as null and void and also for partition. When the matter in relation to the previous suit itself is pending adjudication before this Court, any encumbrance pursuant to the present Gift Settlement Deed dated 13.07.2015 executed by the 7<sup>th</sup> defendant/7<sup>th</sup> respondent herein on behalf of 3<sup>rd</sup> to 6<sup>th</sup> defendants/3<sup>rd</sup> to 6<sup>th</sup> respondents herein in favour of 2<sup>nd</sup> defendant/2<sup>nd</sup> respondent, would have a direct bearing on title and rights of the parties in the S.A. (MD)No.50478 of 2013, pending before this Court. Therefore, in the interest of both sides, the Court below ought to have taken the suit on file and numbered the same and proceeded in accordance with law. However, without appreciating the abovesaid fact, the Court below has rejected the plaint citing pendency of the Second Appeal before this Court, which warrants interference.

7. Accordingly, the Civil Revision Petition is allowed. The trial Court is directed to take up the plaint on file, number the same and proceed in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS-II)

To

- 1.The District Munsif -cum -Judicial Magistrate,  
Sivagangai District.
- 2.The Subordinate Judge, Sivagangai.
- 3.The Sub Registrar, Mylapore, Chennai.

**Copy To:** The Section Officer,ER Section,  
Madurai Bench of Madras High Court,Madurai.

(Note: The Registry is directed to return the original papers to the learned counsel for the revision petitioners).

+1 CC to M/s.R. MAHESWARAN, Advocate(SR-100100[F]dated 21/11/2019)

**CRP (PD) (MD) No. 671 of 2019**

**20.11.2019**

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