

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No1314 of 2018 and
CMP No.6828 of 2018

S.Sankari

...Petitioner

-Vs-

1. G.Ashok Kumar
2. G.Babu
3. G.Saraswathi
4. G.Sasikala
5. G.Vimala
6. M.Palayam
7. P.Ponnuvel
8. G.Thavamani

... Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.12.2017 made in I.A.No.139 of 2016 in O.S.No.93 of 2014 on the file of the learned District Judge, District Court-II, Kanchipuram.

For Petitioner : Mr.B.Vijay

For Respondents : Mr.R.Bharath Kumar

ORDER

The 3rd defendant in O.S.No.93 of 2014 whose application in I.A.No.134 of 2016 seeking rejection of the plaint on the ground that the suit is barred by limitation was dismissed by the trial Court, has come up with this revision.

2. The suit in O.S.No.93 of 2014 was filed by the respondents 1 to 5 herein, seeking declaration that the sale deed executed by the 4th defendant in favour of the 1st defendant on 05.11.1984 is not binding on them and for partition and separate possession of their 5/6th share in the suit properties. According to the plaintiffs, the suit properties originally belonged to one Munusamy, who died intestate and on his death, it devolved on his two sons namely Ganesan and Natarajan. The second son Natarajan also died issue less. The elder son Ganesan has purchased the share of Natarajan and thus he became the absolute owner of the property. The said Ganesan died on 25.09.1983. On 05.11.1984, the 4th defendant Thavamani namely the wife of Ganesan had sold the entire property in favour of the 1st defendant who in turn sold the property to the 3rd defendant. Contending that the sale is not binding on them, the plaintiffs have come up with this suit.

3. The 3rd defendant upon entering appearance, filed an application under Order VII Rule 11 of the Code of Civil Procedure, for rejection of the plaint contending that the suit is barred by limitation in view of Article 60 of the Limitation act which deals with the sale of property by the guardian of the ward.

4. The trial Court rejected the application, concluding that the question whether the suit is barred by limitation or not, has to be decided only upon evidence after trial.

5. I have heard Mr.B.Vijay, learned counsel appearing for the petitioner and Mr.R.Bharath Kumar, learned counsel appearing for the respondents 1 to 5. Respondents 6 to 8 though served, are not appearing either in person or through counsel duly instructed.

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6. Mr.B.Vijay learned counsel appearing for the petitioner would vehemently contend that the Sale deed in question is dated 05.11.1984 and the suit has been filed only in the year 2014 and therefore the same is barred by limitation. The Sale deed dated 05.11.1984 has been produced.

It does not say that the alienee or the vendor alienates the property on behalf of the minor children of Ganesan also. The other facts being admitted, it is clear that the vendor under the Sale deed dated 05.11.1984 was entitled only to 1/5th share in the property and the remaining 4/5th share belonged to other children of Ganesan, some of whom were majors even according to the petitioner on the date of sale. Therefore, it is needless to point out that such a sale can be impugned at a later point of time. Once it is concluded that the sale is not as a guardian of the minors, the sale by the 4th defendant is not in the capacity as a guardian to the minors, then it is unnecessary for the other sharers to seek a declaration regarding the invalidity of the document. Therefore, Article 60 of the Limitation Act will not stand attracted. Hence, I do not find any merit in the claim of the petitioner that the suit is barred by limitation.

7. Mr.B.Vijay, learned counsel appearing for the petitioner would contend that the plaintiff had knowledge of the alienation, soon after the alienation and therefore, the suit is filed in the year 2014, is barred by limitation. The question of knowledge is again a question of fact which has to be decided based on evidence. A suit cannot be rejected on the

ground that it is barred by limitation, unless it is on the face of it barred by limitation. If the question as to whether it is barred by limitation or not is to be decided based on some evidence, then the plaint cannot be rejected. Hence, I do not see any illegality or irregularity in the order of the trial Court. The revision therefore fails and it is accordingly dismissed. The trial Court shall not be influenced with any of the observations made in this order while deciding the suit on merits. No costs. Consequently, connected miscellaneous petition is closed.

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To
The District Judge, District Court-II, Kanchipuram

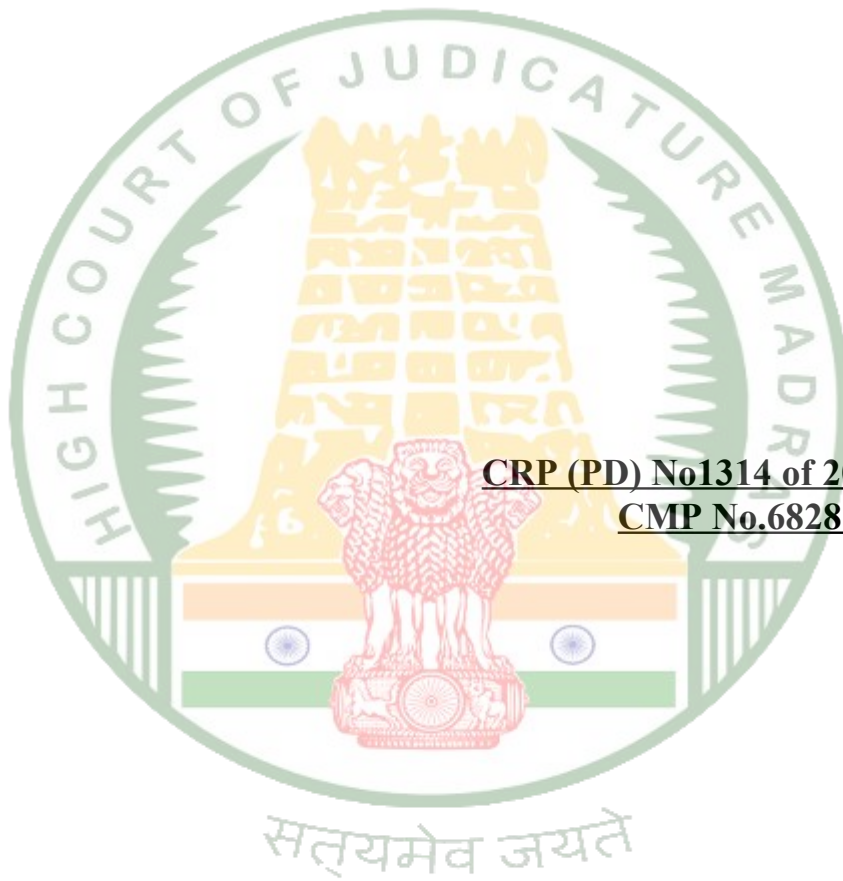
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