

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

**CRP.No.4808 of 2013
and M.P.No.1 of 2013**

Nagarathinam(died)
2.Tmt. Prema
3.Ramesh
4.Ramani

(Appellants 2 to 4 brought on record
as LR's of the deceased sole appellant
vide court order dated 29.01.2020 in
C.M.P.Nos.25144, 25146 & 25148/2019
in C.R.P.No.4808/2013 (TKRJ))

.. Petitioners

..VS..

1. Natarajan
2. Santha
3. Valli
4. Chitra

.. Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order in I.A.No.276/2011 in O.P.No.27/2011 dated 11.04.2012 on the file of the II Additional District Judge at Pondicherry.

For Petitioners : Mr.R.Saseetharan

For Respondents : Ms. S.Bhargavi
for Mr.B.Deepak Narayanan
(R1 to R3)

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order in I.A.No.276/2011 in O.P.No.27/2011 dated 11.04.2012 on the file of the II Additional District Judge, Pondicherry.

2. The deceased petitioner/plaintiff filed a petition in pauper O.P.No.27 of 2016 (subsequently renumbered as O.S.No.19 of 2013) against the respondents seeking to permit the plaintiff to sue as informa papuris, to declare the petitioner/plaintiff as the absolute owner of the item nos. 1 and 2 of the Plaint 'A' schedule mentioned properties and consequently direct the respondents/defendants to deliver the possession to the petitioner/plaintiff, to pass preliminary decree and allot 1/4th share of the item nos.3 to 11 of the plaint 'A'Schedule mentioned properties to the plaintiff and also to pass final decree demarcating the plaintiff's share in the item nos. 3 to 11 of the Plaint 'A' schedule mentioned properties with metes and bounds. During the pendency of the suit, the deceased first petitioner filed an application in I.A.No.276/2011 to amend the Plaint, in which a counter affidavit has been filed by the respondents 2 and 3.

3. The trial Court on considering the submissions made on either and also on considering the oral and documentary evidence dismissed the said application vide order dated 11.04.2012.

4. Challenging the said order passed by the trial Court, the petitioner is before this Court by way of filing this Civil Revision Petition.

5. The learned counsel for the petitioners would submit that the first petitioner filed the O.P.No.27 of 2011 (subsequently renumbered as O.S.No.19 of 2013). He would further submit that though in the counter filed by the respondents, it is stated that they executed the release deed and after executing the release deed they are not entitled to partition, the petitioner came to know only after filing of the counter. But the trial Court wrongly given a finding that the first petitioner admitted the signature in the release deed and cannot challenge the same. Therefore, the order passed by the trial Court is perverse and illegal. He would further submit that merits of the case cannot be decided in the interlocutory application and if the amendment is allowed, no prejudice would be caused to the respondents. He would further submit that the averments mentioned in the counter affidavit can be established and decided in the suit. Therefore, the order passed by the trial Court is illegal and the same warrants interference.

6. The learned counsel for the respondent would submit that the release deed was executed in the year 1982 and by that time the first petitioner was a major. He would further submit that the documents executed after a long time cannot be challenged. Therefore the order passed by the trial Court does not warrant interference.

7. Heard both sides. Perused the materials available on record.

8. Admittedly, the petitioner filed a petition in pauper O.P.No.27 of 2016 (subsequently renumbered as O.S.No.19 of 2013) against the respondents seeking to permit the plaintiff to sue as informa papuris, to declare the petitioner/plaintiff as the absolute owner of the item nos. 1 and 2 of the Plaint 'A' schedule mentioned properties and consequently direct the respondents/defendants to deliver the possession to the petitioner/plaintiff, to pass preliminary decree and allot 1/4th share of the item nos.3 to 11 of the plaint 'A'Schedule mentioned properties to the plaintiff and also to pass final decree demarcating the plaintiff's share in the item nos. 3 to 11 of the Plaint 'A' schedule mentioned properties with metes and bounds. After filing of the counter in O.P. the deceased first petitioner filed an application to amend the plaint to declare the release deed dated 25.11.1982 is null and void and non est in the eye of

law. Admittedly, the first petitioner is party to the document. Though the first petitioner has stated that while executing the gift settlement deed dated 25.11.1982, his father himself represented fraudulently and obtained signature and the alleged settlement deed was registered at the instigation of the respondents 1 to 3 and their mother, in order to cheat the first petitioner, the first petitioner admitted that the signature found in the release deed is that of him and the only contention is that his father fraudulently obtained signature. Hence the first petitioner being a party to the document, should have challenged it within three years, but filed an application in the year of 2011 to declare the documents as null and void, which is beyond the period of limitation. Therefore, the amendment sought for by the first petitioner cannot be allowed. Though the learned counsel for the petitioners would submit that merit of the case can be decided at the time of trial. If the parties to the documents seek relief to declare as null and void it should be done within a period three years. Further, the petitioner being a party to the document has sought for amendment belatedly, which would suddenly change the cause of action. Since the amendment sought for is beyond the period of limitation the same is necessarily to be rejected.

9. In view of the aforesaid circumstances, since the amendment sought for change the cause of action, which is barred by limitation, this

Court is not inclined to allow this Revision. Therefore the Civil Revision petition is liable to be dismissed as devoid of merits.

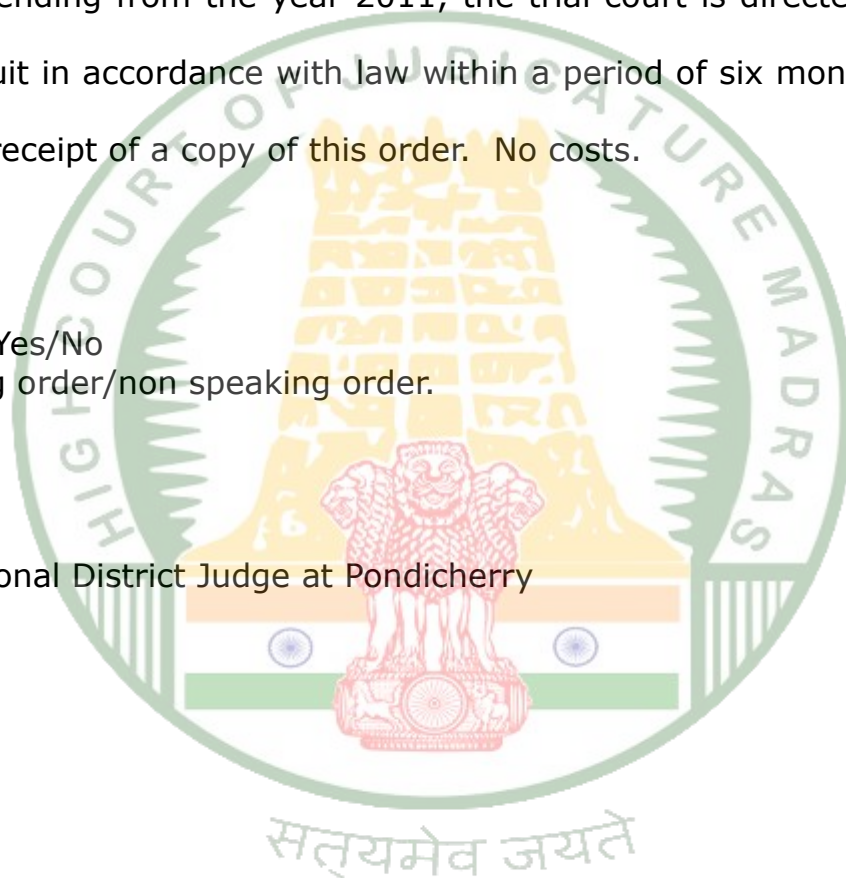
10. Accordingly this Civil Revision petition is dismissed. Since the suit is pending from the year 2011, the trial court is directed to dispose of the suit in accordance with law within a period of six months from the date of receipt of a copy of this order. No costs.

04.08.2020

Index : Yes/No
speaking order/non speaking order.
arr

To

II Additional District Judge at Pondicherry



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C.R.P.No.4808 of 2013

P. VELMURUGAN, J.

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Order in

CRP.PD.No.4808 of 2013

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