

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.1942 of 2018
& C.M.P.No.11275 of 2018

K. GANESAN .. Petitioner

Vs.

1. RANJEETHAM
2. MINOR R.BOOPATHY
3. MINOR R.PRIYA
- MINORS REP. BY MOTHER GUARDIAN SANTI
4. R.SANTHI
5. M.KRISHNAVENI
6. M.DHARMALINGAM
7. K.RASAPPAN
8. G.KALAISELVI
9. RADHAMANI
10. R.CHANDRASEKAR
11. MUTHUMANICKAM
12. L.RAGUNATHAN
13. C.SARASWATHI
14. S.SANTHI
15. A.JAYARAJ
16. R.SENTHIL PERUMAL
17. K.MATHURAVALLI
18. P.RAMASAMY
19. R.RAJAMMAL
20. P.SUMATHI

- 21 S.GANESHKUMAR
- 22 S.J.RANI
- 23 P.SUBHULAKSHMI
- 24 S.R.JAYANTHI
- 25 K.DEVI
- 26 M.BHARATHI
- 27 A.AMSAVARDHNI
- 28 R.CHANDRASEKARAN
- 29 V.KUMAR
- 30 S.SAMBAJI
- 31 S.DEEPAKKUMAR
- 32 R.VENKATESH
- 33 R.MUTHU
- 34 K.DHANAM
- 35 R.BLAMURUGAN
- 36 J.PRATHAP
- 37 A.VIJAYAKUMAR
- 38 N.NITHIN NARAYANMALI
- 39 SANJAIKUMAR
- 40 G.SRINIVASAN
- 41 B.PRAKASH
- 42 G.SHYAMALA
- 43 V.R.MANI
- 44 P.BANUMATHI
- 45 S.MADHESWARAN
- 46 V.SENGODAN
- 47 S.ARUMUGAN
- 48 K.BALAKRISHNAN
- 49 K.RAMAKRISHNAN
- 50 P.RAMASAMY



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51 R.RAJAMMAL
52 D.NATARAJAN
53 D.MURUGESAN
54 S.PACHIAPPAN
55 A.M..THANGAVEL
56 G.RAJESWARI
57 R.SARASWATHI
58 R.KALPANAVALLI

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 13.04.2018 in I.A.No.633 of 2017 in O.S.No.42 of 2011 on the file of the Principal Subordinate Judge, Salem.

For Petitioners : Mr. Bharath Gowtham
for M/s.P.Veena Suresh

For 1st Respondent : Mrs.Hema Sampath, Senior Counsel
for M/s. R.Meenal

ORDER

This matter is taken up for hearing through Video-Conferencing.

The seventh defendant in OS No.42 of 2011, aggrieved by an order dismissing his application for rejection of plaint filed under Order 7 Rule 11

of the Code of Civil Procedure on the ground that the suit is barred by limitation has come up with this Civil Revision Petition.

2. The suit in OS No.42 of 2011 was launched by the first respondent claiming partition and separate possession of her 1/5th share in the suit property. According to the plaintiff, the suit property belonged to Kuppanna Goundar @ Kuppa Goundar as his self-acquisition. The said Kuppanna Goundar @ Kuppa Goundar died about 20 years prior to the suit. Claiming that the defendants, who are the sons of Kuppanna Goundar @ Kuppa Goundar and heirs of the sons had refused to partition the property, the plaintiff has come up with the suit.

3. The purchasers of portions of the property from the sons were also impleaded as parties to the suit. Pending suit, the seventh defendant filed an application seeking rejection of plaint on the ground that the suit is barred by limitation, since Kuppanna Goundar had died even in the year 1983 and his sons have entered into a partition amongst themselves on 14.11.1995 to

the knowledge of the plaintiff. The plaintiff had chosen to launch the suit nearly after two decades of the death of Kuppanna Goundar and therefore, according to him, the suit is barred by limitation.

4. The Trial Court upon a consideration of the law relating to the limitation in respect of Partition Suits as well as ouster of one co-owner by the other concluded that those pleas cannot afford a ground for rejection of the plaint under Order 7 Rule 11 of the Code of the Civil Procedure. On the said finding, the Trial Court dismissed the Application.

5. I have heard Mr.Bharath Gowtham, learned counsel appearing for Ms.P.Veena Suresh for the petitioner and Mrs.Hema Sampath, learned Senior Counsel appearing for M/s.R.Meenal for the first respondent.

6. Mr.Bharath Gowtham, learned counsel appearing for the petitioner would contend that the Trial Court was not right in dismissing the Application. He would submit that the fact that Kuppanna Goundar, died in 1983 and coupled with the fact that the plaintiff was married even during

the lifetime of Kuppanna Goundar, would show that the plaintiff was never an enjoyment of the suit properties for over 23 years prior to the suit. He would also point out that the sons of Kuppanna Goundar, had entered into a Partition Deed even on 14.11.1995 treating the properties as their exclusive properties. After the said partition various portions of property have been developed into lay out and sold to several people. All these transactions were within the knowledge of the plaintiff. Therefore, the plaintiff has been ousted by the defendants and hence she has no right to maintain the suit for partition.

7. Contending contra, Mrs.Hema Sampath, learned Senior Counsel appearing for the respondent would point out that the plea of ouster is a mixed question of law and facts. A co-owner pleading ouster must plead and proves not only exclusive possession, but also show that they have done something which would effectively be in denial of the title of the plaintiff. This has to be established only at the time of trial. A mixed question of fact and law cannot form a ground for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure. I have considered the rival submissions.

8. The suit is one for partition. The relationship is not denied. The title of Kuppanna Goundar is also not denied. Therefore, the plaintiff in the normal circumstances, will be entitled to the share in the property as a heir of Kuppanna Goundar . The defendants are now seeking to deny her share on the ground of ouster.

9. As rightly pointed out by the learned Senior Counsel appearing for the respondent in order to prove ouster mere long and exclusive possession is not sufficient. The person pleading ouster must go one step further and prove that the possession was in denial of the title of the other co-owner/s to the knowledge and prejudice of the other co-owner/s. These facts can be proved only by letting in evidence. The same cannot be a ground for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure.

10. I find that the Trial Court had applied the law relating to rejection of plaint in the right perspective and dismissed the application. I do not see any material irregularity or illegality in the order of the Trial Court, in order

to enable interference under Article 227 of the Constitution of India.

Hence, the Civil Revision Petition fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

31.07.2020

jv

Index: Yes/No

Internet: Yes/No

Speaking order/ Non speaking order

To

The Principal Subordinate Judge,
Salem.

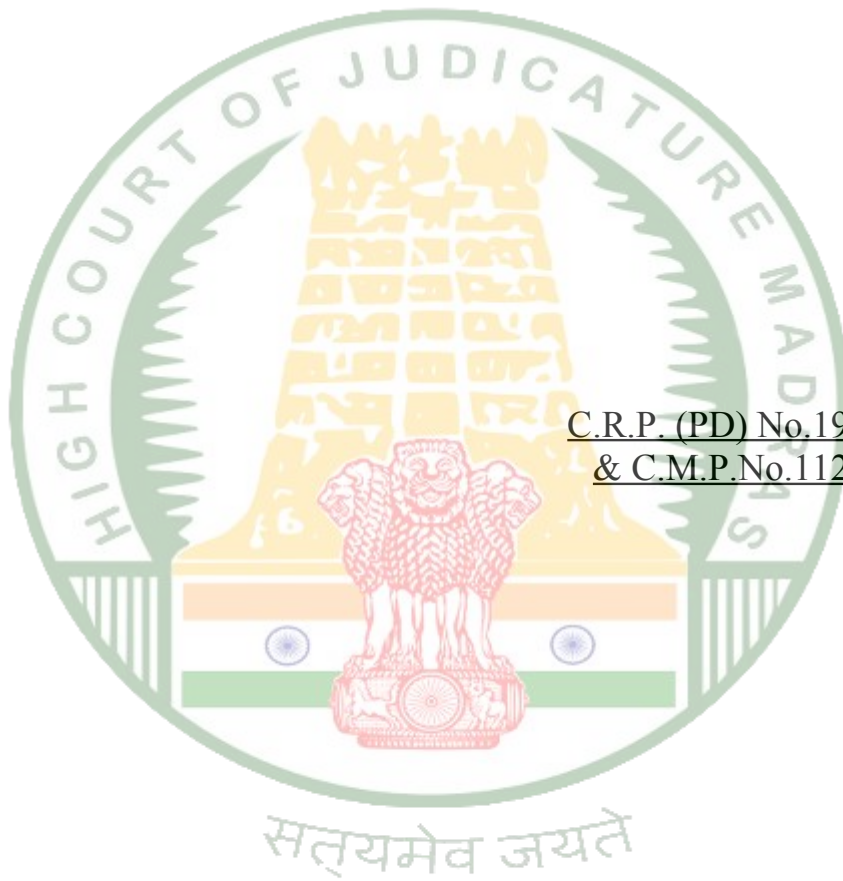


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