

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 13.02.2020

ORDER PRONOUNCED ON : 19.02.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.No.2266 of 2014

and

M.P.No.1 of 2014

Nallammal ... Petitioner/Petitioner/Plaintiff

...Versus...

- 1.Dhanalakshmi
- 2.Rangasamy
S/o.Palani Gounder
- 3.Rangasamy (died)
S/o.Ramasamy Gounder
- 4.Nallathambi
- 5.Nalliyappan
- 6.Nallammal
- 7.Venkatachalam
- 8.Senthilvelavan
- 9.Thangaraj
- 10.R.Thulasimani
- 11.R.Dhanasekar
- 12.R.Sundaramurthy

[RR10 to 12 brought on record as LR's of the deceased R3 Rangasamy vide Court order dated 23.01.2020 made in C.M.Ps.25162,25164 & 25165/2019 in C.R.P.No.2266 of 2014] ... Respondents/Respondents/Defendants

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.04.2014 made in I.A.No.83 of 2014 in O.S.no.576 of 2008 on the file of the learned Sub-Court, Tiruchengode.

For Petitioner :: Mr.N.Manokaran

For R1 :: M/s.D.Gopal & D.Raghu

O R D E R

The plaintiff in the suit is the revision petitioner herein.

2. The plaintiff filed the suit in O.S.No.576 of 2008, seeking partition of the suit properties. The petitioner/plaintiff is the daughter of the Nalliappa Gounder through his first wife. While, the first respondent/ first defendant is the daughter of the said Nalliappa Gounder through his second wife. After the death of the mother of the plaintiff, she moved to the house of maternal grand-father and on attaining majority, at the age of '54' years, she filed a suit for partition by the time. Both the father and the second wife Sellammal died.

3. In the suit, the first defendant who is the daughter of the said Nalliappa Gounder through the second wife, filed her written statement on 16.04.2009 alleging that the plaintiff, after death of her mother, went to her grandparent's house and she grown up under the custody of her maternal grandfather Sengoda Gounder. While the plaintiff was at the age of '16' years, her maternal grand-father Sengoda Gounder being the guardian of her, had received Rs.1,900/- from this defendant's father Nalliyappa Gounder and executed a registered release deed on behalf of his minor grand-daughter, the plaintiff herein on 26.08.1963 and then onwards, the Nalliyappa Gounder, as absolute owner, have been in possession and enjoyment in the suit properties in which, the plaintiff cannot claim any share.

4. Further, the said Nalliyappa Gounder, along with first defendant, later entered into a registered agreement of sale in respect of his share in the suit properties in favour of one Ramasamy Gounder, son of Perumal Gounder on 28.09.1995 and thereby, they agreed to sell the 'A' schedule of the suit properties for Rs.83,000/- and received Rs.75,000/- as advance. Subsequently, the first defendant's father Nalliyappa Gounder died on 04.05.1996 and after the demise of the said Nalliyappa Gounder, the first defendant herein, and her mother being the legal heirs of Nalliyappa Gounder sold the 'A' schedule of properties as per terms and conditions of the registered agreement of sale dated 28.09.1995 and handed over possession to the purchaser Ramasamy Gounder. In respect of the 'B' schedule of property, the first defendant submitted that on 08.02.2005, the said defendant settled the same in favour of his son M.Ravikumar under a registered settlement deed and he is now being in possession and enjoyment in the same as the absolute owner.

5. The learned counsel for the petitioner has submitted that the alleged release deed executed by the maternal grand-father on behalf of the plaintiff during the minority, is erroneous and hence, only at the time of cross-examination of D.W.1, she came to know that and hence, she filed the petition, which was dismissed by the trial Court.

6. Heard the learned counsel for the respondents and perused the records.

7. The suit was filed in the year 2008 itself for partition and other reliefs. The first defendant has filed the written statement on 16.04.2009 itself and the third defendant has filed the written statement on 27.08.2009 itself.

8. In the written statement itself, the defendants have clearly pleaded about the release deed dated 26.08.1963 executed by the maternal grand-father of this petitioner, by name Sengoda Gounder for himself and guardian of this petitioner, who was then minor, in favour of the Nalliyappa Gounder and further the defendants have also pleaded about the sale agreement dated 28.09.1995 and settlement deed dated 08.02.2005. All other documents stated by this petitioner are executed only on the basis of the said release deed dated 26.08.1963, which is marked as Ex.B1. When the first defendant has pleaded about the release deed and other documents in the original written statement itself in the year 2009 itself, filing this petition by the plaintiff at this stage to receive the reply statement is highly ridiculous and not sustainable in law.

9. It is to be stated that the first defendant filed written statement in the year 2009, wherein at Paragraph No. 4 of the written statement as extracted supra has clearly spoken about the release deed dated 26.08.1963 releasing the share of the plaintiff, while he was minor. The plaintiff filed the suit at the age of '54' years as could be seen from the plaint and during the cross-examination of P.W.1 and P.W.2, the same was suggested to the plaintiff's side. So is the evidence of P.W.1 and hence, this Court is of the considered view that the plea of the petitioner is not only highly invalid, but appears to be vexatious, since the plaintiff filed the suit while she was at the age of '54' and plaintiff side evidence is over and suit is posted for cross-examination as D.W.1 and she has not come forward with plea, challenging the alleged release deed said to have been released by her grand-father during her minority and hence, I find that this is nothing but to drag on the trial and the delay in filing reply statement is not properly explained. Besides, it is likely to alter the basic structure of the suit and hence, the order passed by the trial Court, for a different reasoning, is hereby confirmed.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

nvi

To

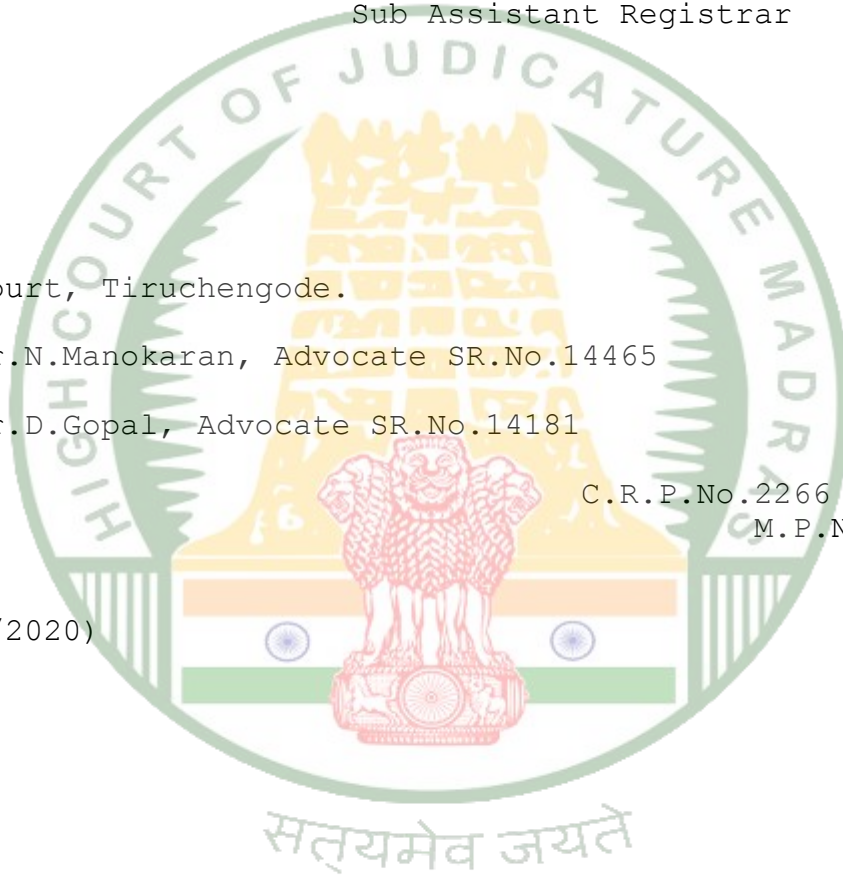
The Sub-Court, Tiruchengode.

+1cc to Mr.N.Manokaran, Advocate SR.No.14465

+1cc to Mr.D.Gopal, Advocate SR.No.14181

C.R.P.No.2266 of 2014 and
M.P.No.1 of 2014

CP (CO)
GMY (19/03/2020)



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