

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.3175 OF 2018
AND
CMP NO.18144 OF 2018

G.Selvaraj

... Petitioner

Vs.

1.R.Muniammal

2.Pushpa

3.K.Jayalakshmi

4.M.Lakshmi

5.R.Sundar alias Sundar Rajan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 31.07.2018 of the learned District Munsif at Tambaram in I.A.No.875 of 2017 in O.S.No.127 of 2017.

For Petitioner

:

Mr.R.Chandrasoodan for
Mr.R.C.Manoharan

For Respondents 2-5

:

Mr.B.Gopalakrishnan

ORDER

This Civil Revision petition is directed against the order dismissing the interlocutory application filed for rejection of plaint under Order VII Rule 11 of Civil Procedure Code on 31.07.2018.

2. The petitioner is the first defendant in the suit in O.S.No.127 of 2017. The respondents 2 to 5 herein are the plaintiffs and the first respondent herein is the second defendant in the suit.

3. The plaintiffs filed a suit for declaration of Sale Deed dated 29.11.1985 as null and void and not binding upon them and for permanent injunction. The suit property is an ancestral property of the grandfather of the plaintiffs Late. Ganapathy Naicker. The property was subdivided as S.No.325/1C – 0.03 Cents, S.No.325/1F – 0.22 Cents, S.No.325/1G – 0.11 Cents and S.No.325/1B – 0.25 Cents totalling to an extent of 0.61 Cents at Selaiyur Village, Tambaram Taluk, Kancheepuram District. After the demise of Late. Ganapathy Naicker, his only legal-heir by name Ms.Muniyammal, the second defendant in the suit, inherited the property. The second defendant

is the mother of the plaintiffs. According to the plaintiffs, it is an ancestral property and therefore, all the plaintiffs and the second defendant have equal shares. On 03.06.2016 and 23.06.2016, the second plaintiff made a representation to the Revenue Officials at Tambaram for issuance of patta and for surveying the property. Since no action was taken, the plaintiffs filed a writ petition in W.P.No.24680 of 2016 for a direction to the Revenue Officials to transfer the patta in their favour as well as in the name of the second defendant, who is the mother of the plaintiffs. Pursuant to the order passed in the above writ petition dated 18.07.2016, the property was surveyed on 29.12.2016, on which date, the first defendant had objected the survey and abused the plaintiffs in a filthy language. A police complaint was also lodged in Crime No.3019 of 2016 on 29.12.2016 on the file of Selaiyur Police Station under Section 294(b) and 323 IPC. During the enquiry of the said incident, the first defendant claimed that he purchased the property through a Registered Document vide Doc.No.8923/1985 dated 29.11.1985 on the file of the Sub Registrar Office, Tambaram. The plaintiffs got enlightened of the transactions and enquired the second defendant about the same. They got information that using the illiteracy of the second defendant, the first

defendant made her to execute the sale deed in the guise of getting signature in a mortgage deed to an extent of 0.20 Cents and the remaining 41 Cents only was sold to Thiru.Elumalai, one of the close relatives of the first defendant and the plaintiffs reserve their right to file a separate suit against the sale of remaining extent. Even though the sale deed was executed in favour of the first defendant, possession and enjoyment are with the plaintiffs and the second defendant. Therefore, they are entitled to file a suit for partition claiming their respective shares. Therefore, the plaintiffs issued a legal notice to the first defendant and approached the Court for the relief of declaration and permanent injunction.

4. The learned counsel appearing for the revision petitioner would contend that the suit is hopelessly barred by limitation. The second defendant has inherited the property as a sole legal-heir of her father and sold the entire property to various persons. She was aware of the sale deed and the allegation that she was asked to sign a mortgage deed and it was obtained by using her illiteracy are all false. The allegations are made for the purpose of

creating an illusory cause of action to maintain the suit. In fact, the writ petition was filed by the second defendant along with the plaintiffs. Till date, the second defendant is living with the plaintiffs. In that event, the allegation that the plaintiffs have filed the writ petition along with the second respondent on the pretext that they do not know of the sale, is nothing but suppression of material facts. Only for the purpose of avoiding the Court fee as well as to develop the allegations of fraud, they have arrayed their mother as second defendant. From the averments, it is clearly admitted that the mother of the plaintiffs had executed a document in the year 1985. Therefore, once the sale deed is admitted, the suit for declaration of the same should have been filed within three years. The averments made in the plaint that it is an ancestral property is absolutely false and the same will not give rise to any cause of action and therefore, on the grounds of illusory cause of action and limitation, would seek for rejection of plaint.

5. Per contra, learned counsel appearing for the respondents 2 to 5 would contend that the property belongs to their grandfather to which they are also entitled to a share. Therefore, when the plaintiffs have equal share, in the ancestral property, the sale made by the second defendant is illegal and

not binding upon them. From the date of knowledge, they have filed a suit within the period of limitation. The cause of action arose only on 29.12.2016 when they got knowledge of the sale deed. Therefore, the limitation, being a matter of mixed question of law and facts, it can be decided only after elaborate trial. He would rely on the judgments of the Hon'ble Supreme Court in **BALASARIA CONSTRUCTION (P) LTD. VS. HANUMAN SEVA TRUST AND OTHERS [2006 (5) SCC 662]** and **POPAT AND KOTECHA PROPERTY VS. STATE BANK OF INDIA STAFF ASSOCIATION [2005 (7) SCC 510]**. Therefore, the plaint cannot be rejected at the threshold and accordingly, the Civil Revision Petition is liable to be dismissed.

6. I have considered the submissions made on either side and perused the materials available on record.

7. The relief sought for in the suit is to set aside the sale deed of the year 1985 as null and void and not binding on the plaintiffs. It is well settled that the declaration suit declaring the document as null and void shall be filed within three years. The plaintiffs claim right over the property as co-sharers and seek to set aside the same from the date of their knowledge. In this background, it has to be seen whether the plaint discloses the cause of

action or not and whether it is barred by law or not.

8. From the averments, it could be seen that the property was owned by one Late.Ganapathy Naicker and on his death, his daughter Muniyammal, the second defendant herein had inherited the same. As discussed above, the plaintiffs claimed that it is an ancestral property. It is well settled that the property derived by a male lineal descendant from male alone constitutes an ancestral property. The property inherited from the maternal grandfather will not fall within the definition of ancestral property. In that view of the matter, it could be seen that the property is not an ancestral property as claimed by the plaintiffs. Therefore, it should be construed that the suit property absolutely belongs to the second defendant.

9. Admittedly, the sale deed was executed in the year 1985 by the second defendant. In that event, who can question the fraudulent execution or that the document was obtained by fraud is none other than the second defendant herself. The plaintiffs cannot plead the same on hear-say. It is also important to note that fraud cannot be pleaded for the sake of creating a cause of action. But, it should be specifically pleaded as to when and how the fraud was committed with supporting materials. Only because it is

repeatedly stated that some act of the other party is fraudulent, it will not become a fraudulent act. In that view of the matter, mere pleading of fraud will not give rise to cause of action. It is also important to note that the writ petition in W.P.No.24680 of 2016 was filed by the second defendant along with the plaintiffs, it can be inferred that they had consensus among themselves. They could have filed the suit through the second defendant, but have to pay court fee on the market value of the property. When they were filing the suit, the mother was arrayed as second defendant. The action of the plaintiffs is not above board and the contention of the petitioner that there is suppression of material facts and in order to avoid court fee, the present suit was filed on illusory cause of action is not without force. In that event, the date of knowledge pleaded by the plaintiffs on the basis of the quarrel and information of the second defendant appears to be for creating an illusory cause of action. Further, if at all they have got any right to sue, they should have sued the second defendant for partition. But, seeking a relief of declaration after a period of 32 years of execution of a document is hopelessly barred by limitation. Furthermore, the action of the second defendant in selling the property against the first defendant alone leaving out

the other sale transactions clearly proves that the petitioners have not come out with any concrete cause of action, but on illusory cause of action. Therefore, it is very clear that no cause of action arose for filing the suit and it is hopelessly barred by limitation. The Trial Court has not considered all these issues in proper perspective and therefore, the order dated 31.07.2018 passed in I.A.No.875 of 2017 in O.S.No.127 of 2017 by the learned District Munsif, Tambaram is set aside and the plaint stands rejected.

10. In fine, the Civil Revision Petition stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

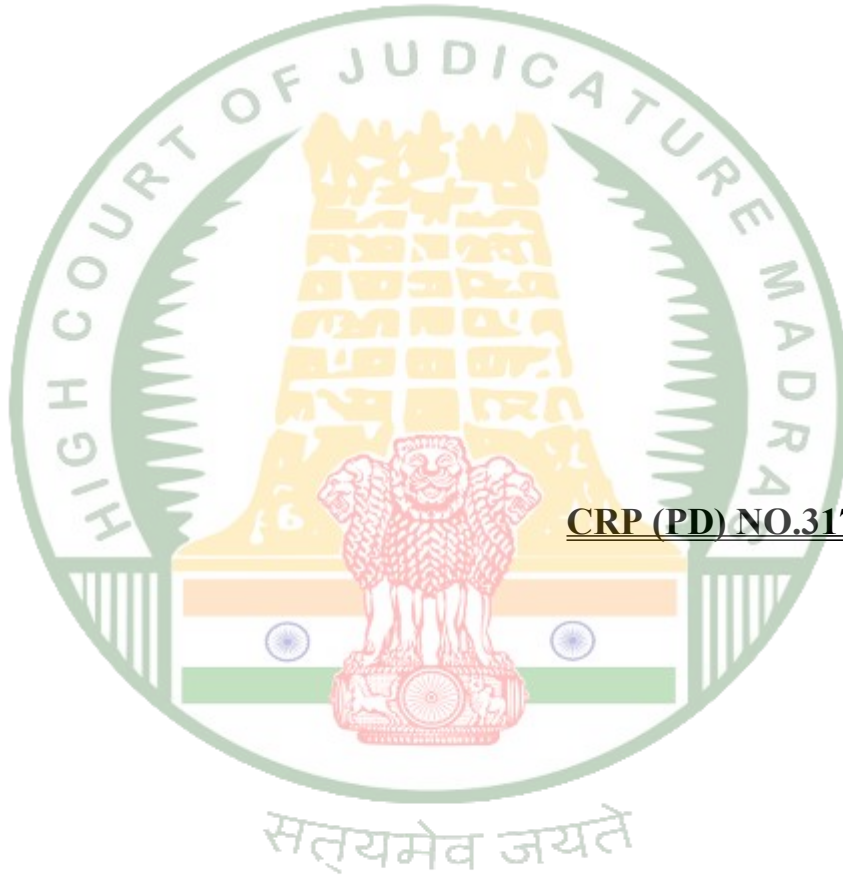
To

The District Munsif
Tambaram.

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M.GOVINDARAJ, J.

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