

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD)No.1622 of 2018 &
C.M.P.No.8786 of 2018

1.A.Varaguna Pandian
2.V.Uma Rani

....
Petitioners

Vs.

G.Rajagopal

....
Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records of the lower Court and set aside the impugned order and decretal order dated 09.03.2018 passed in I.A.No.451 of 2017 in O.S.No.45 of 2017 by the Principal Sub Judge, Chengalpattu.

For Petitioners : Mr.K.Bijaj Sundar

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ORDER

This Revision arises out of the order passed by the Principal Sub Court, Chengalpattu in I.A.No.451 of 2017 in O.S.No.45 of 2017, whereunder the trial Court rejected the Application filed by the petitioner to strike off the plaint.

2. For the sake of brevity and clarity, the parties are referred to as per their litigative status before the trial Court.

3. The factual background in a nutshell is as follows:-

The defendants are husband and wife. The plaintiff instituted the suit against the defendants for declaration to declare the registered sale deed dated 29.03.2007 executed by the first defendant in favour of the second defendant as null and void and for consequential permanent injunction. It is the case of the plaintiff that the suit property measuring an extent of 54 cents of land comprised in S.No.55/1C situated at Perumattu Nallur Village, Chengalpattu Taluk was owned by her mother Pattu Ammal by virtue of a registered sale deed dated 01.02.1976. She had been in possession and enjoyment till her death on 09.09.2009. The plaintiff claims

that his mother Pattu Ammal obtained loan from the first defendant by mortgaging the suit property and the same was discharged. While so, the first defendant had executed a registered sale deed dated 29.03.2007 in favour of his wife, the second defendant in respect of 34 cents, out of 54 cents in the suit property.

4. According to the plaintiff, the defendant would have obtained signature from his mother by misrepresenting that it was document for mortgage loan and he came to know the sale deed dated 29.03.2007 only on 16.07.2015, when the defendants along with henchmen came to the suit property and attempted to trespass in the suit property. It is the specific case of the plaintiff that he has been in possession and enjoyment of the same and the sale deed dated 29.03.2007 is a concocted and forged document.

5. The defendants filed a written statement stating that the suit is barred by limitation; the plaintiff has sought for reliefs, which his mother Pattu Ammal could not have done if she is alive; The plaintiff has no *locus standi* to file the suit and it is frivolous and vexatious litigation. Thereupon, the defendants filed the present petition I.A.No.451

of 2017 under Order VII Rule 11 read with 151 of C.P.C. to reject the plaint on the grounds, mentioned above.

6. The plaintiff filed a counter reiterating his stand in the plaint.

It is stated that the respondent was aware of the contents in the sale deed dated 29.03.2007 only on 17.07.2015 and the suit was filed within a period of three years and hence, it was not barred by limitation. The trial Court dismissed the petition. Challenging the same, the present Revision.

7. Heard Mr.K.Bijaj Sundar, learned counsel for the petitioner and perused the materials available on record.

8. The learned counsel appearing for the petitioner urged that the plaintiff's mother sold the property to the second defendant on 29.03.2007 by a registered sale deed, questioning the same, the present suit was filed after lapse of 8 years, which is clearly barred by limitation. It is further contended that the other legal-heirs of Pattu Ammal were not parties to the suit and hence, the suit is not bad for non joinder of necessary parties. It is further submitted that the defendants have raised so many grounds to strike off the plaint, but the learned Judge by a cryptic order rejected the application. Hence, it is liable to be set aside.

9. In the instant case, the plaintiff filed the suit to declare the registered sale deed dated 29.03.2007 vide document No.4384 of 2007 registered in the Office of Sub Registrar, Chengalpattu, executed by the first defendant in favour of the second defendant is null and void and for consequential permanent injunctions. The plaintiff would claim that his mother-Pattu Ammal purchased the suit property under a registered sale deed dated 01.02.1976 and she has been in possession and enjoyment of the same till she died intestate on 09.09.2009. It is further stated that after the death of his mother-Pattu Ammal, the plaintiff, as eldest male member in the family is in possession and enjoyment of the property. The suit is filed on behalf of his sisters.

10. It is alleged that the said Pattu Ammal borrowed money from the first defendant by mortgaging the suit property and she discharged the mortgage loan. Thereafter, the first defendant had executed a sale deed by using the Power of Attorney obtained from the said Pattu Ammal.

11. It is an admitted fact that the defendants are none other than the husband and wife and the first defendant executed the sale deed in

favour of the second defendant. In the plaint, it has been stated that on 16.07.2015, the defendant along with their henchmen came to the suit and attempted to trespass in the suit property claiming that the second defendant is the owner of the suit property. The plaintiff immediately applied for copy of the sale deed and thereafter, filed the suit. It appears the suit was filed within the period of three years from the date of his knowledge.

12. It is fairly well settled that while considering the application under Order VII, Rule 11 CPC, the Court is bound to see the plaint averments. The question whether plaint discloses cause of action and whether it is barred by any law is to be decided by looking at the averments contained in the plaint itself and not the defence set up in the written statement. While considering the application, the strength or weakness of the case of the plaintiff is not to be examined. In other words, plaint cannot be rejected on the basis of the allegations made in written statement. This position has been consistently reiterated by the Hon'ble Supreme Court and this Court in the decisions referred infra:-

(i) **(2017) 4 MAdLJ 652 (Lalitha Vs. Sundar)**

(ii) **2008 10 SCC 97 (Abdul Gafur v. State of Uttarakhand),**

(iii) AIR 2011 Mad 136 (N.Ravindran v. Ramachandran), and

(iv) AIR 2003 SC 759 (Saleem Bhai v. State of Maharashtra).

13. As above mentioned, the plaintiff has narrated the facts in the plaint for seeking reliefs in the suit. For brevity, the averments are not reiterated here under. That part the limitation is a mixed question of fact and law. As per the averments in the plaint, the suit has been instituted within the period of limitation from the date of his knowledge.

14. So far as contention of the learned counsel for the petitioner, the other legal heirs are necessary and proper parties in the suit, I find no substance in the arguments. It is trite law that to protect and safeguard the interest of joint family parties, any one of the sharers is entitled to file suit. At this juncture, it would be useful to refer paragraph No.10 of the Judgment of Hon'ble Supreme Court in **[(2006) 2 SCC 724]** [*Mohinder Prasad Jain Vs. Manohar Lal Jain*]:-

10. This question now stands concluded by a decision of this Court in *India Umbrella Mfg. Co. v. Bhagabandei Agarwalla* [(2004) 3 SCC 178] wherein this Court opined: (SCC p. 183, para 6)

“6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha v. Jagannath [(1976) 4 SCC 184] and Dhannalal v. Kalawatibai [(2002) 6 SCC 16] , SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.”

15. Though the learned Judge has not dealt with the grounds raised by the petitioner, it was dismissed holding that the real facts of the case could be known, on appreciation of evidence at the time of pronouncing Judgment. In the considered view of this Court, the petitioner has not made out any grounds to strike off the plaint.

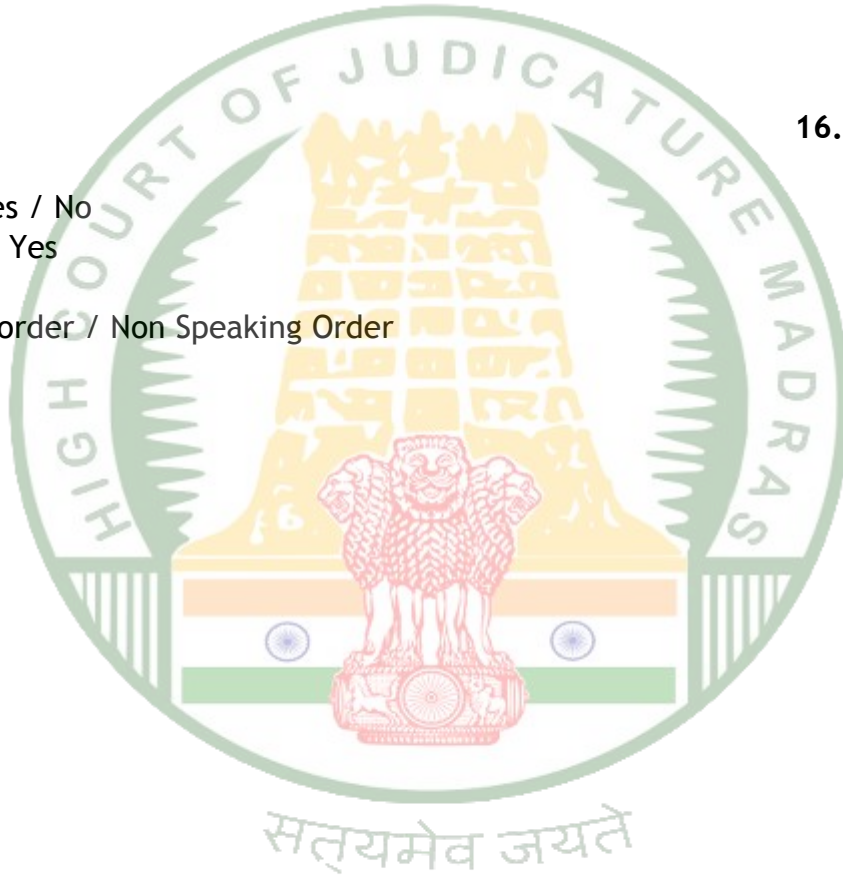
16. For the foregoing reasons, I find no illegality or infirmity in the order impugned in this Civil Revision Case. Accordingly, the Civil Revision Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes

Speaking order / Non Speaking Order

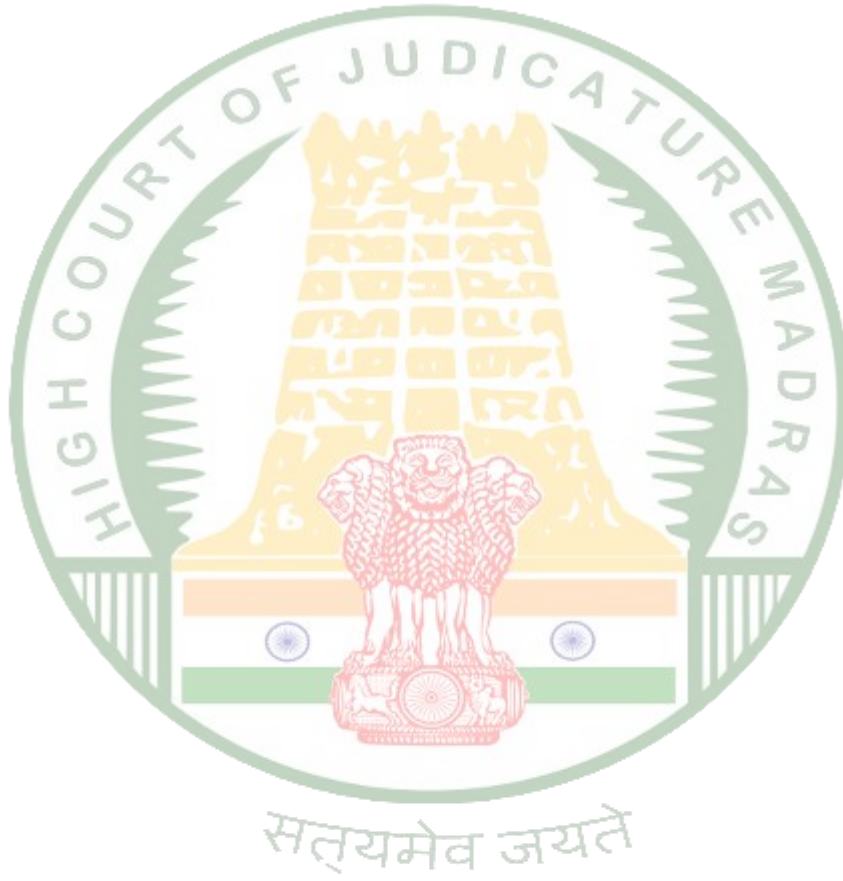
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To

The Principal Sub Judge,
Chengalpattu.

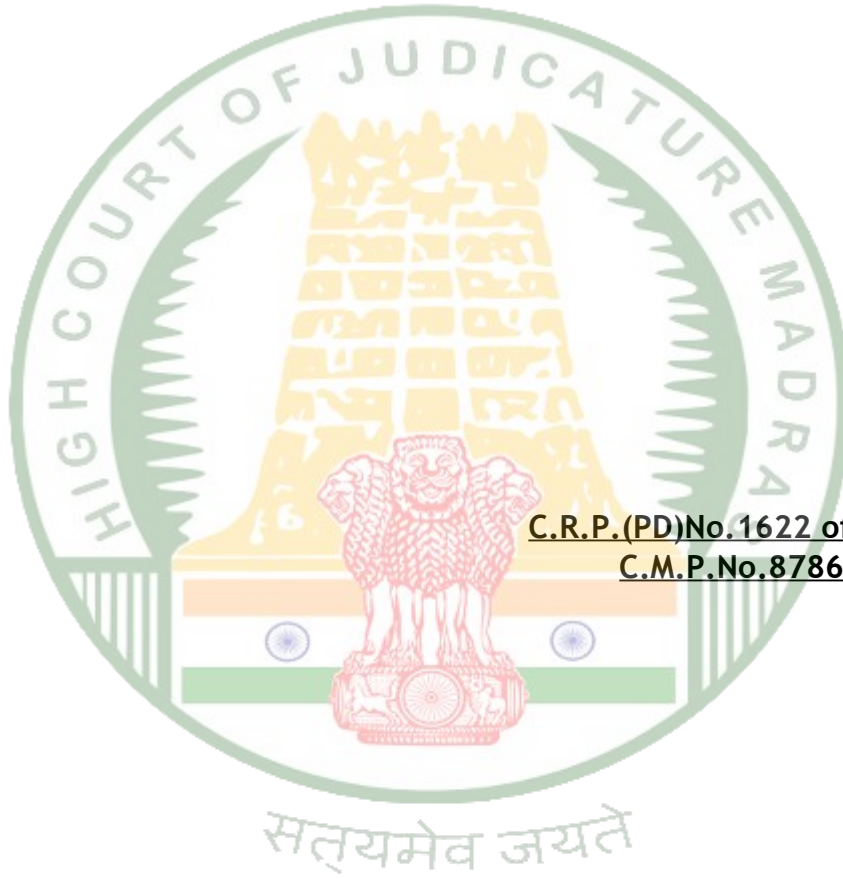


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