

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(PD).Nos.454 & 478 of 2018
and C.M.P.Nos.2397 & 2520 of 2018

R.Padmini

...Petitioner

in C.R.P.(PD).No.454 of 2018

Vs

1.P.Narayanan

2.G.Suganya

... Respondents

in C.R.P.(PD)No.454 of 2018

1.P.Narayanan

2.G.Suganya

... Petitioners

in C.R.P.(PD).No.478 of 2018

R.Padmini

...Respondent

in C.R.P.(PD).No.478 of 2018

Prayer Civil Revision Petitions filed under Article 227 of Constitution of India, against the order and decretal order dated 20.10.2017 made in I.A.No.1274 of 2016 in O.S.No.52 of 2016 on the file of the Principal District Judge, Chengalpattu, Kanchipuram District.

In C.R.P.No.454 of 2018

For Petitioner : Mr.T.Easwaradhas
For Respondents : Mr.S.Anburaja

In C.R.P.No.454 of 2018

For Petitioners : Mr.S.Anburaja
For Respondent : Mr.T.Easwaradhas

COMMON ORDER

These Civil Revision Petitions have been filed against the order dated 20.10.2017 made in I.A.No.1274 of 2016 in O.S.No.52 of 2016 on the file of the Principal District Judge, Chengalpattu, Kanchipuram District.

2.I.A.No.1274 of 2016 was filed before the Court below by the Revision Petitioner in C.R.P.No.478 of 2018, to reject the plaint as if the suit is barred by limitation and the suit has not been properly valued for the purpose of Court fees. The Court below after hearing both the parties has directed to value the suit under Section 40 of the Tamil Nadu Court Fees Act. As far as limitation is concerned, the Court below rejected the plea of the petitioner therein. Aggrieved over the same, the C.R.P.No.478 of 2018 has been filed by the petitioner in I.A.No.1274 of 2016.

3.C.R.P.No.454 of 2018 was filed by the respondents in I.A.No.1274 of 2016 challenging the direction of the Court below to value the suit under Section 40 of the Tamil Nadu Court Fees Act.

4.Mr.S.Anburaj, learned counsel for the petitioners in C.R.P.No.478 of 2018 submitted that he is appearing for the subsequent purchaser of the suit schedule property. The release deed was executed by the respondent in the year 2006. However, the present suit was filed in the year 2016 after the period of 10 years from the date of execution of the release deed. Therefore, he contended that the respondent ought to have challenged within a period of 3 years from the execution of release deed and the Court below has not considered this aspect and rejected the plea with regard to the limitation.

5.Per Contra, Mr.T.Easwaradhas, the learned counsel for the respondent in C.R.P.No.478 of 2018 submitted that the respondent was just 18 years old at the time of execution of the release deed and she was not aware of the fact that whether she executed the release deed or the partition deed. At the time

executing the release deed the respondent's mother informed her that it is a partition deed, therefore, she signed the document and she was on the impression that she signed only for the partition deed. Subsequently she came to know about the release deed. Therefore, the Court below has rightly rejected the plea of limitation. However, with regard to the Court fees, the Court below has directed to pay the Court fees under Section 40 of the Tamil Nadu Court Fees Act. The Court fee was paid under Section 25(d) of the Court Fees Act. Therefore, the relief was granted to the extent to value the suit under Section 40 of the Tamil Nadu Court Fees Act and pay the Court Fee. Hence, he prayed for dismissal of the Civil Revision Petition.

6. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7.I.A.No.1274 of 2016 in O.S.No.52 of 2016 was filed by the Revision Petitioner in C.R.P.(PD).No.478 of 2018, to reject the plaint on the ground that the suit is barred under limitation and the improper valuation of the suit property. The Court below after hearing both the parties has come to the

conclusion that the suit was not valued properly and directed to value the suit under Section 40 of the Tamil Nadu Court Fees Act and to pay the Court fee and rejected the plea of limitation. The Paragraph Nos. 3 and 4 of the order passed by the Court below is extracted hereunder:

“This application has been filed to reject the plaint as of the plaint is barred by Limitation and the suit has not been valued properly for the purpose of Court fees. The suit ought to have been valued U/s. 40 of the Tamil Nadu Court Fees Act and on both the counts the learned counsel appearing for the defendants 3 & 4 prays for rejection of the plaint.

4.In the Counter and as well as during the arguments, the plaintiff's counsel contents that the defendants 1 and 2, the mother and brother of the petitioners played fraud upon her. She came to know about the release deed only very recently. At the time of execution of release deed dated 02.01.2006 she is about 18 years. She was not certain whether she was major or minor at that time? She signed the document only under the impression that it is a partition deed. Now, only she realised that it is release deed. Thus, the limitation has to be reckoned from the date of knowledge and thus this suit is in time. As far as the limitation is concerned, it is a mixed question of law and facts, while dealing with an

application Under Order 7 Rule 11 CPC the pleadings in the plaint alone has to be taken into consideration. As per plaint pleadings the plaintiff came to know about the alleged release deed very recently. So within three years from the date of knowledge the suit has been filed. Whether such an allegation is acceptable or not is the point to be addressed in trial not now and thus this Court is not inclined to allow the petition on the ground of limitation.”

8. On perusal of the above, would show that the Court below rejected the plea of limitation stating that the execution of release deed cannot be decided in the application filed under Order 7 Rule 11 CPC, whereas, it has to be decided during the trial, which is just and proper.

9. With regard to the aspect of valuation of the suit, the Court below passed the following order:

“5. The next point urged is the question of Valuation. Admittedly, the present plaintiff is a party to the release deed dated 02.01.2006. As rightly contended by the petitioner herein in order to set aside the document, the suit has to be valued U/s 40 of Tamil Nadu Court Fees Act on the basis of the market value of the property or on the value of the document concerned. On

the other hand, the plaintiff herein had chosen to value the suit U/s 25(d) of the Court Fees Act as if it is incapable of valuation and valued the relief at Rs.1,000/- which is prima facie not acceptable. The present plaintiff is not an illiterate. In the document, the very heading of the document it has been mentioned in Tamil as, “”. Even as per the plaint allegations she was under the control of her mother. But she married three years ago now she is aged around 26. All along she has not raised any objection for the alleged settlement deed. Now, the mother and brother executed a sale deed in favour of the present petitioners/defendants 3 and 4. The property is not in joint possession. The plaintiff is out of possession. Apart from that she is a party to the document. Under these circumstances, the objection raised by the defendants 3 and 4 as to the valuation appears to be just and reasonable. Anyhow, for such a defect straight away the plaint cannot be rejected. The plaintiff must be given an opportunity to pay the Court fees. Hence, this Court is of the considered view directing the plaintiff to value the relief relating to the release deed dated 02.01.2006 U/s 40 of the Tamil Nadu Court Fees Act is just and reasonable. Accordingly, this petition is disposed. The plaintiff is directed to value the reliefNo.1 U/s 40 of the Tamil Nadu Court Fees Act.”

10.After considering the arguments of both the parties the Court below directed the respondent therein to value the suit under Section 40 of the Tamil Nadu Court Fees Act. On perusal of the plaint, it could be seen that the respondent has filed the suit to declare the release deed dated 02.01.2006 in D.O.C.No.39/2006 and sale deed dated 30.12.2015 in DOC.No.13660/2015 as null and void and for the partition of the suit schedule property. Since the respondent sought for declaration, the suit has to be valued under Section 40 of the Tamil Nadu Court Fees Act. Therefore, this Court does not find any infirmity in the order passed by the Court below. However, the Court below needs to frame appropriate issues with respect to limitation and valuation of the suit.

11.In view of the above, the Court below is directed to frame appropriate issues with regard to the limitation as well as valuation of suit properly fees and decide the same. The Court is also directed to dispose the suit within a period of 6 months from the date of receipt of a copy of this order.

12. Accordingly, these Civil Revision Petitions are disposed of. No Costs.
Consequently, connected miscellaneous petitions are closed.

23.02.2021

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

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To:

The Principal District Judge, Chengalpattu,
Kanchipuram District.



WEB COPY

KRISHNAN RAMASAMY,J.

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