

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

**C.R.P.(NPD) No.484 of 2018
and
CMP Nos.2543 of 2018 and 9942 of 2021**

1. Margrate Mary
2. Joshpin Margrate
3. Anitha Jose

..... Petitioners

Vs

Fr.Periyanayagam, O.C.D
Son of M.Arumaiselvam
Provincial of Tamil Nadu Carmelite Province,
OCD Religious Trust,
Carmeliet Provincial House,
Sirumalar Nagar, Manikandam,
Tiruchirapalli, Tamil Nadu.

S.Savariyappan (Died)

Mariyasusai (Died)

..... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 22.08.2017 made in R.E.A.No.27 of 2009 in R.E.P.No.32 of 2008 in O.S.No.344 of 1998 on the file of the District Munsif, Palacode.

For Petitioners : Mr.R.Selvakumar
For Respondent : Mr.S.A.Rajan
for Mr.J.M.Dharma Sanjeevi

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 22.08.2017 made in R.E.A.No.27 of 2009 in R.E.P.No.32 of 2008 in O.S.No.344 of 1998 on the file of the District Munsif, Palacode, thereby allowing the petition to substitute the Decree-holder.

2. The petitioners are the Judgment Debtors. Originally, one Savariappan through his power agent filed a suit in O.S.No.344 of 1998 for declaration and recovery of possession. In the said suit, the Judgment Debtors were absent and they were set ex-parte. Therefore, the ex-parte decree was passed on 21.06.2000. Originally, the Decree-Holder filed an Execution Petition in REP No.32 of 2008 on 18.11.2008. Pending suit, the said Savariappan has cancelled the Power of Attorney executed in favour of one Arulraj and executed a gift deed dated 22.09.2000 in favour of his daughter i.e.,Sebastiammal. In turn, the said Sebastiammal settled and endowed the suit properties in favour of the respondent herein by a registered settlement deed dated 23.07.2018 vide Document No.1961/2008.

Thereafter, the revenue records muted in favour of the respondent herein. Therefore, he filed a petition to permit him to substitute the petitioners in the name of Savariappan represented through his power agent Arulraj.

3. The learned counsel for the petitioners would submit that the petition for substituting the Execution Petition filed under Order 21 Rule 16 of CPC is not at all applicable to the case on hand. Only in the year 2009 the petition has been filed to substitute the Decree-Holder, based on the subsequent transfer under Order 21 Rule 16 of CPC read with Section 146 of CPC. On the date of filing of the Execution Petition, the present transferee has no *locus standi* and on the date of order of adjudication on 22.08.2017, the Execution Petition is barred by the Law of Limitation. He further submitted that subsequent to the settlement deed executed by the said Savariappan in favour of his daughter was cancelled by the cancellation deed dated 18.11.2011 and the same was marked as Ex.R1. The petitioners also filed a petition in CMP No.9942 of 2021 raising additional grounds stating that even as per the settlement deed executed by Savariappan, the entire properties were not settled in favour his daughter except some parts

of the property comprised in S.No.32 and other properties were settled in her favour. Therefore, the petitioners cannot be substituted in the name of Savariappan. He further submitted that the ex-parte decree dated 21.06.2000 is counter in nature and not considered the points for determination and simply allowed the suit.

4. Per contra, the learned counsel for the respondent submitted that the points raised by the petitioners can be very well adjudicated under Section 47 of CPC before the Execution Court. The order under challenge is nothing but to maintain cause title to include the respondent as petitioners in the Execution Petition. Therefore, he prayed for dismissal of the Civil Revision Petition.

5. Heard, Mr.R.Selvakumar, learned counsel appearing for petitioners and Mr.S.A.Rajan, learned counsel appearing for the respondent and perused the materials available on record.

6. The only point for consideration is that whether the

respondent can be substituted in the name of original Decree Holder and whether the petition under Order 21 Rule 16 is applicable or not. Originally, one Savariappan filed a suit in O.S.No.344 of 1998 for declaration and recovery of possession in respect of the suit properties and the same was allowed by the Judgment and Decree dated 21.06.2000. Thereafter, by a settlement deed dated 22.09.2000, the suit property was settled in favour of his daughter i.e., Sebastiammal. In turn, by a settlement deed dated 23.07.2008, the properties were settled by her in favour of the respondent herein. In the meanwhile, the said Savariappan filed an Execution Petition in REP No.32 of 2008 on 18.11.2008 and in the year 2009 the respondent filed a petition to substitute the petitioners. In fact, the said Savariappan also cancelled the Power of Attorney executed in favour of one Arulraj dated 22.09.2000, which was marked as Ex.A1 and executed a settlement deed in favour of his daughter. However, the said Savariappan filed an Execution Petition in REP No.32 of 2008 through his power agent i.e., Arulraj on 18.11.2008, pending the suit, he cancelled the Power of Attorney executed in favour of the said Arulraj. That apart on the date of filing of the Execution Petition, the suit properties were settled as early as

on 22.09.2000 in favour of his daughter. Therefore, the said Savariappan ought not to have filed an Execution Petition in his name through his power agent.

7. On the strength of the Power of Attorney dated 22.09.2000, his daughter i.e., Sabestiammal executed a settlement deed in favour of the respondent herein by a registered settlement deed dated 23.07.2008, which was marked as Ex.A3. Therefore, the petition to substitute the power holder under Order 21 Rule 16 of CPC is not at all maintainable.

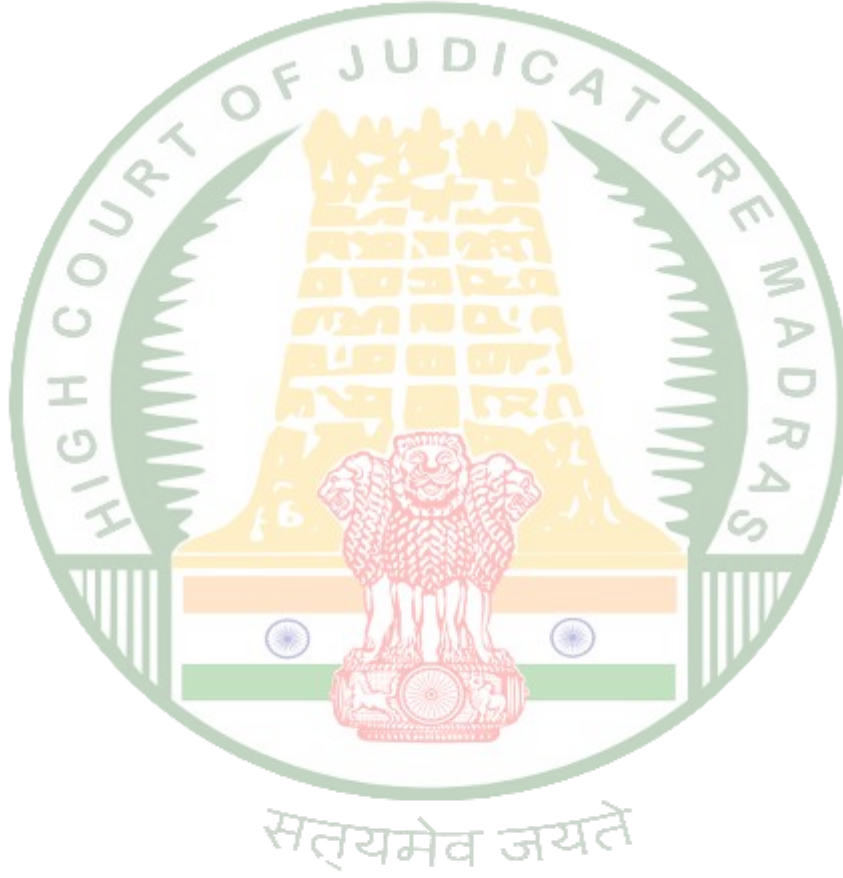
8. In view of the additional grounds, the order passed in R.E.A.No.27 of 2009 in R.E.P.No.32 of 2008 in O.S.No.344 of 1998 on the file of the District Munsif, Palacode, dated 22.08.2017 is hereby set aside and the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petitions are also closed. No costs.

14.07.2021

lpp
Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No

To

The District Munsif,
Palacode.



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