

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM

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

CRP.PD.No.769 of 2018
and CMP.No.4191 of 2018

1.T.Subramaniam
2.V.Krishnaveni

..Petitioners

Vs.

Viswanathan

..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the order in CMA.No.4 of 2016 dated 24.11.2017 on the file of Hon'ble Principal Subordinate Judge, Tiruppur by confirming the order in IA.No.170 of 2016 in OS.No.20 of 2015 dated 11.11.2016 on the file of District Munsif Court, Palladam.

For Petitioners : Mr.R.Sureshkumar
for M/s.K.M.Vijayan Associates

For Respondent : Mr.V.Sivakumar

ORDER

This Civil Revision Petition is filed against the order in CMA.No.4 of 2016 dated 24.11.2017 on the file of Principal Subordinate Judge, Tiruppur by confirming the order passed in IA.No.170 of 2016 in OS.No.20 of 2015 dated 11.11.2016 on the file of District Munsif Court, Palladam, thereby dismissing the petition for rejection of plaint.

2. The petitioners are the defendants 1 and 3 and the respondent is the plaintiff. The respondent filed suit for declaration declaring that the partition deed dated 04.12.1983 as null and void and also for declaration declaring that the Will dated 26.03.2012 executed by the first petitioner herein as null and void along with permanent injunction in respect of the suit property. The respondent is the son and the first petitioner is the father. The second petitioner is the sister of the respondent. The respondent filed suit for declaration and permanent injunction alleging that when he was minor, partition deed dated 04.12.1983 was executed and registered one. Though the partition deed was executed, that is not acted upon even till today. After attaining majority, the respondent and the petitioners along with another daughter have sold the son's property by the registered sale deed dated 27.07.1995. In the said sale deed, no whisper about the partition deed and as such it is a sham and nominal document and even till today, not yet acted upon. The entire revenue records stand in the name of their grandfather and not mutated in the name of the respective shareholders as per the partition deed. In the meanwhile, the first petitioner herein filed maintenance application under Section 125 of Cr.P.C. as against the respondent, in MC.No.9 of 2013 on the file of the Judicial Magistrate Court, Palladam and it is pending for adjudication. Therefore, the first respondent filed suit for declaration

declaring that the partition deed as null and void and declaring that the Will also as null and void. While pending the suit, the petitioners filed petition for rejection of plaint on the ground that the suit is barred by limitation.

3. The learned counsel for the petitioners would submit that Article 60 contemplates that to set aside a transfer of property made by the guardian of a ward which prescribes three years time for the ward, who has attained majority, from the date on which the ward attained majority. Therefore, the fact of knowledge is not the material to file suit. When the minor attained majority, the limitation starts from the attainment of majority for three years to challenge the transfer of property. Therefore, the suit is clearly barred by limitation.

4. The learned counsel for the respondent would submit that though the first petitioner created and registered partition deed dated 04.12.1983 when the respondent was minor, it is not even acted upon even till today. It is clear evident from the sale deed executed by all the family members dated 27.07.1995, when the respondent was at the age of 20 years, the first petitioner herein executed Will based on the partition deed, bequeathed his entire share in favour of daughters i.e. 2nd and 3rd defendants in the suit. Therefore, Article 60 of the

Limitation Act does not apply to the case on hand, and only Article 58 of the Limitation Act come into play and as such, the right to sue accrues only from the date of knowledge of the respondent herein since the alleged partition deed dated 04.12.1983 never acted upon. Further, the question of limitation is mixed law and facts and the cause of action for the suit is also bundle of law and facts. Therefore, the plaint cannot be rejected on the ground of limitation.

5. Heard, Mr.R.Sureshkumar, the learned counsel for the petitioners, and Mr.V.Sivakumar, the learned counsel for the respondent.

6. The petitioners filed petition for rejection of plaint and the same was dismissed. Aggrieved by the same, they also preferred appeal before the first appellate court and the same was also dismissed. The only point for consideration is that whether the suit is barred by limitation or not?

7. The respondent filed suit for declaration declaring that the partition deed dated 04.12.1983 as null and void and also subsequent Will dated 26.03.2012 as null and void along with prayer of permanent injunction in respect of the suit property. Admittedly, the suit property

is ancestral one and when the respondent was minor, the first petitioner herein executed partition deed between the first petitioner and the respondent through his guardian i.e. mother on 04.12.1983. Thereafter, all the family members have executed sale deed in respect of some of the properties which were allotted to the respondent and the first petitioner by the sale deed dated 27.07.1995. When the minor after attainment of majority, challenges the transfer of property, Article 60 will come into play. Article 60 of the Limitation Act had clearly meant to set aside a transfer of property made by the guardian of a ward, which prescribes 3 years time for the ward, who has attained majority, from the date on which the ward attained majority.

8. The partition deed dated 04.12.1983 was executed when the respondent was aged about eight years. The respondent specifically averred that the said partition deed was created by the first petitioner herein with an intention to defraud the respondent share in the family properties and it is a sham and nominal document. The alleged partition deed is never acted upon even till today. In fact, in the year 1995 all the family members have executed sale deed in favour of third party in respect of portion of the properties, in which they did not even whisper about the partition deed. All the revenue records are not mutated in their respective name even after partition

deed. Therefore, the plea of limitation involved mixed question of fact and law, and on that ground the plaint cannot be rejected. Therefore, the court below rightly dismissed the petition for rejection of plaint and this Court finds no infirmity or illegality in the order passed by the court below.

9. Accordingly, the civil revision petition is dismissed. However, the court below is directed to explore the possibility of settlement between the parties since the dispute is between the father and the son. Consequently, connected miscellaneous petition is closed. No order as to costs.

22.06.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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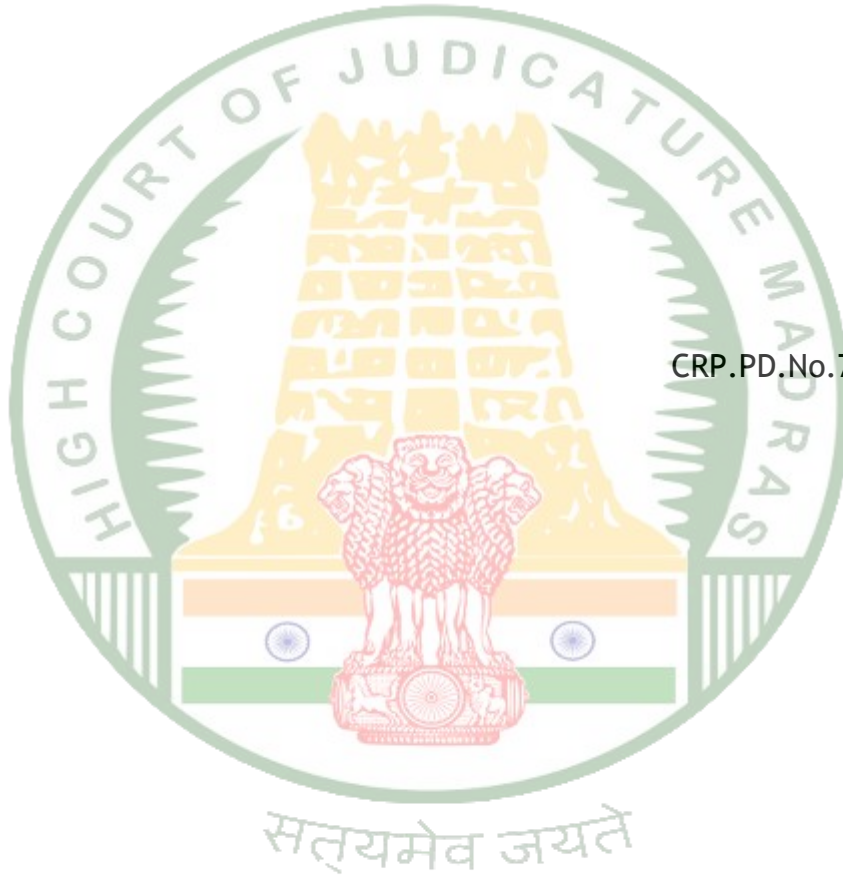
- 1.The Principal Subordinate Judge,
Tiruppur
- 2.The District Munsif,
Palladam.



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G.K.ILANTHIRAIYAN,J.

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