



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.07.2021

Pronounced on :09.07.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.PD.No.1963 of 2020

1.Pannerselvam
2.Selvamani
3.Rahamathulla

... Petitioners/Defendants 5, 6 & 7

Vs.

1.Aarav (Minor 3 ½ years)
2.Akruti (Minor 3 ½ years)
Minor Plaintiffs 1 and 2 are
represented by their next friend/guardian
S.Manivannan.

...Respondents/Respondents/Plaintiffs

Prayer:- This petition filed under Article 227 of Constitution of India to set aside the order and decretal order dated 18.03.2020 made in I.A.No.1 of 2019 in O.S.No.120 of 2018 on the file of the III Additional District Court, Salem.

For Petitioners : Mr.M.R.Sheik Abdul Rahim

For Respondents : Mr.P.Jagadeesan

ORDER

This Revision Petition has been filed by the 5th, 6th and 7th defendants in O.S.No.120 of 2018 now pending on the file of the III Additional District Court, Salem questioning the order dated 18.03.2020 in I.A.No.1 of 2019.

2.O.S.No.120 of 2018 had been filed by two minor plaintiffs namely, Aarav and Akruti against the defendants seeking a Judgment and Decree directing the defendants to divide the suit property into six equal shares and put the plaintiffs in separate possession of the 2/6th undivided share and for a final decree by appointing a Commissioner and to declare the Sale Deeds dated 14.03.2017, 09.07.2014, 25.03.2015 and 06.07.2017 as null and void and for consequential injunctions restraining the defendants 1 to 12 from alienating or encumbering the suit



property and against the 13th and 14th defendants namely, the Branch Manager of Indian Bank and the Bank Manager of Lakshmi Vilas Bank from collecting the bank dues till the disposal of the suit.

WEB COPY

3.It must be mentioned that the 1st defendant is the paternal grandfather of the plaintiffs and the 2nd defendant is the father of the plaintiffs and the 3rd defendant is the mother of the plaintiffs.

4.The plaintiffs were born on 02.11.2016. The revision petitioner / 5th, 6th and 7th defendants had purchased item No.2 of the properties mentioned in the schedule to the plaint on 09.07.2014 by Document No.3126 of 2014 registered in the Sub-Registrar Office Attur.

5.It is to be noted that they had purchased the property much prior to the birth of the plaintiffs. They had therefore filed I.A.No.1 of 2019 under Order VII Rule 11 of CPC seeking to strike out the plaint taking advantage of Sub Rule (d) namely, that the suit is barred by law and in this connection relied on Article 59 of the Limitation Act, 1963, which provides that the suit should be filed within a period of three years from when the cause of action had first arisen. This Application came up for consideration before the learned III Additional District Judge, Salem and by order dated 18.03.2020, the Application was dismissed. In the course of the order, the learned III Additional District Judge, Salem had stated that the facts stated by the revision petitioners have to be decided only during the trial.

6.Heard arguments advanced by Mr.M.R.Sheik Abdul Rahim, learned counsel for the petitioners / 5th, 6th and 7th defendants and Mr.P.Jagadeesan, learned counsel for the respondents / plaintiffs.

7.It is evident that the revision petitioners had purchased the property much prior to the birth of the respondents/plaintiffs. They had purchased the same for valuable consideration by Sale Deed registered as Document No.3126 of 2014 in the office of the Sub-Registrar Attur on 09.07.2014. It had been stated that the revision petitioners are in peaceful possession of the 2nd item of suit property. The plaintiffs were born on 02.11.2016. On that date, item No.2 property was not available with the family. The plaintiffs can never acquire any right over the said property. The property had already been sold. They base their claim to the properties on the basis of right acquired owing to their birth in the family. Such right can be acquired only with respect to the properties available with the family at the time of their birth or when they were in



the womb. They were test tube babies but certainly not conceived on 09.07.2014. Insofar as item No.2 is concerned, it had already been sold. This fact cannot be either denied or disputed, since it had been sold by way of a registered document.

WEB COPY

8.The fact that there is a relief sought to set aside the particular Sale Deed cannot come to the rescue of the respondents/plaintiffs since by no stretch of imagination can they seek a right over the property sold even prior to their birth. They were not even in the womb nor could they have been conceived at the time when the Sale Deed was executed in favour of the revision petitioners herein. It would not be just to keep the suit on file with respect to the 2nd item of suit property since the revision petitioners had purchased the property for valid consideration from lawful vendors and therefore, they cannot be dragged into a litigation more than two years subsequent to their purchase. There is no bonafide on the part of the respondents / plaintiffs in including item No.2 to the schedule of the suit properties and in also impleading the present revision petitioners as parties / defendants to the suit.

9.I hold that the order dated 18.03.2020 in I.A.No.1 of 2019 now under question in the present Civil Revision Petition will necessarily have to be set aside. It is accordingly set aside. Hence, the Civil Revision Petition is allowed. No costs.

10.The suit in O.S.No.120 of 2018 is struck off insofar as the 5th, 6th and 7th defendants are concerned and further the 2nd item of suit property is also struck off from the plaint. The suit will proceed with the other defendants and with the other items of suit properties.

11.The III Additional District Court Salem, may make necessary entries in the suit register and in O.S.No.120 of 2018 by deleting the 5th, 6th and 7th defendants and item No.2 of the suit properties.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

smv



To:

The III Additional District Court,
Salem.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

C.R.P.PD.No.1963 of 2020

UM(CO)
SB(02/07/2021)