

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 22.12.2020]

[ORDERS PRONOUNCED ON : 22.03.2021]

CORAM:

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

C.R.P. [PD] No.2229 of 2020

Annapurani

... Petitioner/Plaintiff

.. Vs ..

1. Muthupillai
2. Alamalu
3. Rukkumani
4. Vennila
5. Baskar
6. Annadurai
7. Sasikala
8. Kalpana
9. Sangeethkumar
10. Aranganathan
11. Priya
12. Innisai
13. Pachamuthu Educational Trust
Rep. by its Chairman Baskar,
Having office at 1st Cross Street,

Nedumaran Nagar,
Dharmapuri Taluk,
Dharmapuri District.

14. Sasi Educational Trust,
Rep. by Chairman Aranganathan
Nallana Alli Village,
Old Dharmapuri Post
Dharmapuri Taluk,
Dharmapuri District.

15. Hi-tech Apparel Park
Rep. by Baskar
Door No.30-E, Nedumaran Nagar,
Dharmapuri Taluk,
Dharmapuri District.

... Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 30.11.2020 passed by the learned Principal District Judge, Dharmapuri, in S.R.No.3734 of 2020.

For Petitioner : Mr.V.Lakshminarayanan

सत्यमेव जयते

ORDER

This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order of rejection of the plaint passed by the learned Principal District Judge, Dharmapuri, in S.R.No.3734 of 2020, dated 30.11.2020.

2(a). The revision petitioner is the plaintiff in the suit in O.S.SR.No.3734 of 2020.

2(b). The said suit was filed by the plaintiff for the following reliefs:-

Prayer No.1 is for Preliminary decree of partition of 8/49th shares in the scheduled mentioned properties;

Prayer Nos.2 to 12 are to declare that the Gift Deeds (2 numbers viz., D.No.1465/2007 dated 25.07.2007 and D.No.1998/2009 dated 23.07.2009); Settlement Deeds (4 numbers viz., D.No.4135/2010 dated 24.09.2010; D.No.4156/2010 dated 24.09.2010; D.No.4796/2010 dated 21.11.2010 & D.No.4503/2010 dated 21.10.2010); Release Deed No.1258/2007 dated 04.05.2007; Gift Deed No.3343/2013 dated 29.07.2013; Partition Deed No.1146/2016 dated 14.03.2016; Lease Agreement Deed Document No.3571/2016 dated 21.09.2016; Transport pathway Document No.2348/2017 dated 15.09.2017 respectively as null and void;

Prayer No.13 is for permanent injunction restraining the defendants 5 to 10 not to disturb their alleged possession of the suit property;

Prayer No.14 is for permanent injunction restraining the 10th defendant not to put up any construction in Survey No.153 of 'G' schedule property and

Prayer No.15 is for costs of the suit.

2(c). Along with the above said prayers, the plaintiff has filed plaint Document Nos.1 to 132.

2(d). When the suit was presented for numbering, after some returns, it appears that the case was called in the open Court on five occasions and thereafter, the learned Principal District Judge, in-charge, Dharmapuri, has rejected the plaint by holding that the plaintiff seeks preliminary decree of partition of 8/49th shares in the schedule

mentioned properties, however, there was already a Release Deed, which is of the year 2007, wherein, the plaintiff herself is a party and the subsequent Partition Deed is of the year 2016 and hence, instead of challenging the above said two documents viz., Release Deed dated 04.05.2007 and the registered Partition Deed dated 14.03.2016, the plaintiff has asked for partition and hence, rejected the plaint.

3. The learned counsel for the revision petitioner/plaintiff would contend that without giving an opportunity as to the applicability of the Amendment Act, the learned Principal District Judge, in-charge, Dharmapuri, has decided the issue and hence, prays for setting aside the order passed in S.R.No.3734 of 2020 and also prays for a direction to the trial Court to number the suit. The learned counsel for the revision petitioner has relied upon a decision of this Court reported in **2009 (5) L.W. 67 [R.Manickam & another Vs. The Sengunthar Charitable Trust] and others**].

4(a). This Court has perused the plaint averments and the plaint documents. As per the plaint averments, it is clear that the plaintiff is a

widow, aged about 72 years and she is the elder daughter of one Pachiappa Gounder. The first defendant is the mother of the plaintiff. The defendants 2, 3 and 4 are the daughters and defendants 5 and 6 are the sons of the deceased Pachiappa Gounder while defendants 9 and 10 are the grandsons of the said Pachiappa Gounder.

4(b). According to the plaint, the Gift Deed No.1465/2007 is dated 25.07.2007 and the plaintiff has sought for setting aside the various Gift Deeds, Settlement Deeds, Release Deed, Partition Deed dates ranging from 2007 to 2017. The suit was filed on 05.11.2020. Admittedly, the plaint first prayer is for a preliminary decree of partition of 8/49th shares and the subsequent prayer Nos.2 to 12 are to declare that the Gift Deeds [2 numbers viz., D.No.1465/2007 dated 25.07.2007 and D.No.1998/2009 dated 23.07.2009]; Settlement Deeds [4 numbers viz., D.No.4135/2010 dated 24.09.2010; D.No.4156/2010 dated 24.09.2010; D.No.4796/2010 dated 21.11.2010 & D.No.4503/2010 dated 21.10.2010]; Release Deed No.1258/2007 dated 04.05.2007; Gift Deed No.3343/2013 dated 29.07.2013; Partition Deed No.1146/2016 dated 14.03.2016; Lease Agreement Deed Document No.3571/2016 dated

21.09.2016; Transport pathway Document No.2348/2017 dated 15.09.2017 respectively as null and void; and prayer Nos.13 to 15 are for Permanent injunction restraining the defendants 5 to 10 not to disturb their alleged possession of the suit property; Permanent injunction restraining the 10th defendant not to put up any construction in Survey No.153 of 'G' schedule property and also for costs of the suit respectively. All the prayers are ex-facie of out of time and therefore, the prayers sought for by the plaintiff are barred by limitation and by "iceing the cake", the prayer No.1 was iced upon the time barred prayer and the same is an abuse of process of law and hence, the trial Court has rightly has taken note of the same.

5. From the plaint documents, it is seen that the plaintiff's father Pachaiappa Gounder died on 29.12.2006. Be that as it may, from the plaint documents, the trial Court has come to the conclusion that after the death of the father, the plaintiff has relinquished her right way back on 04.05.2007 and partition was effected in March 2016 [Plaint Document Nos.123 and 124].

6. It is further seen from the plaint documents that the plaintiff's father Pachaiappa Gounder died on 29.12.2006. From the plaint Document No.123, the plaintiff had already released her share as early as in the year 2007 and as per the plaint Document No.124, partition was effected in the year 2016. Based upon these two documents, the trial Court has rightly come to the conclusion that the Document No.123 is being of the year 2007 and the plaint was filed in the year 2020. After the period of 13 years, the plaintiff wanted to re-open the case and challenge the Release Deed executed by her in favour of her brothers. Instead of challenging the said Release Deed, since it is hopelessly barred by limitation, by a clever drafting, a suit as if it is for a partition has been filed and accordingly, rejected the plaint at the threshold and the same is under challenge.

7. In a decision reported in **(2020) 7 Supreme Court Cases 366 [Dahiben Vs.Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others]**, the Hon'ble Supreme Court has held as follows:-

"(i) to (iv)

(v)If, however, on a meaningful reading of the plaint, it is found that the suit does not disclose right to sue, cause of action or suit is barred by any law and the Court has no option but to reject the plaint and without any merit, Order 7 Rule 11 C.P.C.

(vi) The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has not option, but to reject the plaint.

(vii) to (ix)

(x)...The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action, and bring the suit within the period of limitation.

(xi) In Raghwendra Sharan Singh, (2020) (6) SCC 601, the Supreme Court held that the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed."

The above legal position pronounced by the Hon'ble Supreme Court is kept in mind.

8. The sum and substance of the plaint averments, as averred in the plaint, would go to show that one Pachaiappa Gounder had two sons

and four daughters and as stated above, he died on 29.12.2006. As per the plaint averment and the plaint Document No.123, dated 04.05.2007, the plaintiff along with other sisters are released their shares in respect of a portion of the property followed by partition and the Partition Deed was duly registered on 14.03.2016 as a registered Document No.1146/2016. Now, the plaintiff averred that those documents are obtained from her by fraudulent means and hence, she wanted to set aside those documents and thereby seeks for a declaration to declare that the Document No.123 viz., Release Deed No.1258/2007 dated 04.05.2007 and Document No.124 viz., Partition Deed No.1146/2016 dated 14.03.2016 as null and void and consequently, prayed for partition. As rightly observed by the learned trial Judge that by a clever drafting, instead of seeking to set aside the Release Deed of the year 2007 and Partition Deed of the year 2016, the plaintiff so drafted a suit an illusory cause of action for partition.

9. A Division Bench of this Court in ***A.S.No.708 of 2012 [Govindarajan Padayachi Vs. Premananda Vijayakumaran and others]***, dated 30.06.2016 has held that "It is also a settled principle of

law that the plea of limitation is nothing but a question of law and facts, but however, the Court can very well reject a legal proceeding, if it is apparent on the face of the record that the same is barred by limitation."

In the said judgment, the Division Bench further held that "as per Order 7 Rule 11 of Civil Procedure Code, 1908, if a particular plaint does not disclose the cause of action, the same can be rejected".

10. Reliefs claiming of by going around or circumventing the limitation that are barred by limitation and the same is impermissible as held in the decision of the Hon'ble Supreme Court reported in **(2005) 5 SCC 548 [N.V.Srinivasa Murthy and others Vs. Mariyamma (Dead) by proposed L.Rs. and others]**.

11. The Hon'ble Supreme Court in **Civil Appeal No.2960 of 2019 [Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs.]**, has held that "if clever drafting has created the illusion of a cause of action, as observed by this Court in a catena of decisions, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order 10 of CPC. Therefore, as observed by the

Hon'ble Supreme Court reported in *(1977) 4 Supreme Court Cases 467 [T.Arivanandam Vs. T.V.Satyapal and another]*, an activist Judge is the answer to irresponsible law suits."

12. After considering the above decisions, it was held by the Hon'ble Supreme Court in the cases reported in *[i] 2009 (12) SCC 454 [Sham Lal alias Kuldip Vs.Sanjeer Kumar]; [ii] AIR 2005 SC 2897 [N.V.Srinivasa Murthy V.Mariyamma] and [iii] 2007 (10) SCC 59 [Ram Prakash Gupta V.Rajiv Kumar Gupta]*, that on considering the averments in the plaint, if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11 (d) of CPC."

13. After going through the prayers sought for in the suit, I find that the prayers so structured in such a way to make out "a claim by clothing time barred right are appears to be within the Limitation." However, the learned trial Judge has rightly declodged the false cover of the plaint prayer and after perusing the plaint, the learned trial Judge has rightly rejected the plaint by exercising his power and the same cannot

held to be erroneous on the facts and circumstances of the case as seen from the plaint and plaint documents. The citations referred to by the learned counsel for the revision petitioner/plaintiff is not applicable to the facts of the present case.

14. Hence, after going through the plaint averments and the plaint documents, I find that the averments and the assertion are only to make out a plea as if the suit was within the time in respect of the time barred right. In other words, on a meaningful reading of the plaint and the plaint documents, I find that by a clever drafting, the plaintiff is camouflaging the prayers in the suit as a partition suit and hence, a similar finding arrived at by the trial Court however, for different reasoning, does not suffer from any irregularity or illegality warranting interference by this Court under Article 227 of the Constitution of India.

15. In the result, this civil revision petition is dismissed. No costs.

22.03.2021

Internet :Yes
Jrl

RMT.TEEKAA RAMAN, J.

Jrl

To

The Principal District Judge,
Dharmapuri.



**Order made in
C.R.P. [PD] No.2229 of 2020**

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