

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP(NPD).No.2525 of 2017

and

CMP.No.11944 of 2017

1. Rangathal
2. Rangasamy Gounder
3. Deivanayaki
4. S.Menaga
5. Ramasamy @ Sivasamy
6. Karthick
7. Krishnakumar

... Petitioners

Vs.

1. Parameshwari
2. Ramasamy @ Rajan

3. Karunya Institute of Technology and Science,
Rep.by its Trustee K.Sundaraj.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and final order dated 10.04.2017 passed in I.A.No.839 of 2016 in O.S.No.589 of 2013 by the learned Third Additional District and Sessions Judge, Coimbatore.

For Petitioners : M/s.V.S.Usharani

For Respondents : Mr.A.Thiyagarajan (for R1 & R2)
: Mr.D.Shivakumaran (for R3)

ORDER

This Civil Revision Petition is directed as against the fair and final order passed in I.A.No.839 of 2016 in O.S.No.589 of 2013 dated 10.04.2017 on the file of the learned Third Additional District and Sessions Judge, Coimbatore, thereby, dismissing the petition filed for rejection of plaint.

2. The petitioners are the defendants 1,2 and 4 to 8 in the suit filed by the respondents 1 and 2 herein for declaration to declare that the sale deed executed in favour of the 3rd respondent herein in respect of the 1st and 2nd respondent's 1/6th each share in respect of the 1st item of the suit schedule properties as null and void and declare the same in favour of the respondents 1 and 2 herein and also prayed for declaration to declare that the Power of Attorney dated 10.12.2007 in respect of the 1st and 2nd respondent's each 1/6th share pertaining to 2nd item of the suit property as null and void. Pending the suit, the petitioners filed their written statement on 16.04.2014. Thereafter, on 23.09.2016, they filed a petition for rejection of plaint on the ground of limitation under Order 7 Rule 11 (d) of the Code of Civil Procedure. The same was dismissed and aggrieved by the same, the

present Civil Revision Petition is filed.

3. The learned counsel for the petitioners submitted that the first respondent executed the sale deed in favour of the 3rd respondent herein, when she was 24 years old on 12.11.2007 along with the petitioners to an extent of 3.82 acres in S.F.No.74/1 situated at Alandhurai Village, Coimbatore South Taluk for the valid sale consideration. She further submitted that the 2nd respondent is none other than his 1st respondent's father and she left his family viz., the 1st respondent as well as his wife, when the 1st respondent was aged about 7 years. Thereafter, the petitioners only had taken care of the first respondent and after completing her studies she is working in the IT concerned. After a period of 6 years, the 1st respondent filed a suit on the ground that the 1st respondent came to understand that the petitioners obtained her signature in the alleged sale deed dated 12.11.2007 said to have been executed in favour of the 3rd respondent herein. It is nothing but fraudulent document created by the petitioners herein, as if the 1st respondent sold out her share derived through her mother in favour of the 3rd respondent herein. Therefore, it is clearly barred by limitation under Article 59 of the Limitation Act, 1963 and

the suit is liable to be rejected.

4. She further submitted that as far as the 2nd respondent is concerned, he left the 1st respondent and his wife long back and now filed the suit for possession in respect of his share and it is also totally barred by Article 110 of the Limitation Act, 1963. It provides that a person excluded from joint family property for a period of 12 years could not have any right to file a plaint after the lapse of 12 years. Without considering the same, the Court below dismissed the petition for rejection of plaint.

5. Per contra, the learned counsel appearing for the respondents contended that the respondents 1 and 2 filed the suit on several issues. The petitioners come forward with the petition only on the ground of limitation. All along the respondents 1 and 2 categorically avered, so many allegations as against the petitioners herein. Particularly, they avered that the sale deed itself obtained on fraud and it is fabricated one. Therefore, it is a mixed question of law and fact and it cannot be rejected in limine. Therefore, it cannot be rejected on the ground of limitation.

6. Heard the learned counsel for the petitioners as well as the learned counsel appearing for the respondents.

7. On a perusal of the plaint filed by the respondents 1 and 2 herein, it is specifically alleged that the 1st respondent came to know that the petitioners obtained her signature in the sale deed dated 12.11.2007 and executed in favour of the 3rd respondent in respect of the property ad-measuring 3.82 acres comprised in S.F.No.74/1 situated at Alandhurai Village, Coimbatore South Taluk. It is nothing but fraudulent document created by the petitioners herein. Further, alleged that during the sale transaction, no sale consideration transferred to the petitioners and also subsequently a sum of Rs.19 lakhs paid by the 3rd respondent through cheque in favour of the 1st petitioner herein. It is also stated that the 1st petitioner and her husband viz., the 2nd petitioner, in connivance with other petitioners, obtained the signature of the 1st respondent herein, in the Power of Attorney dated 10.12.2007 as if she had given Power to sell her share of the properties to the third parties. In the recital of the said Power of Attorney dated 10.12.2007, the first respondent was mentioned as daughter of Rangathal, which is also not correct. Therefore, the claim of the

respondents 1 and 2 prima facie appears to be within the period of limitation. Therefore, the Court below rightly dismissed the petition for rejection of the plaint and this Court finds no infirmity or illegality in the order passed by the Court below.

8. Accordingly, this Civil Revision Petition is dismissed. The suit is of the year 2013, the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

16.03.2021

Speaking/Non-speaking order
Index : Yes/No
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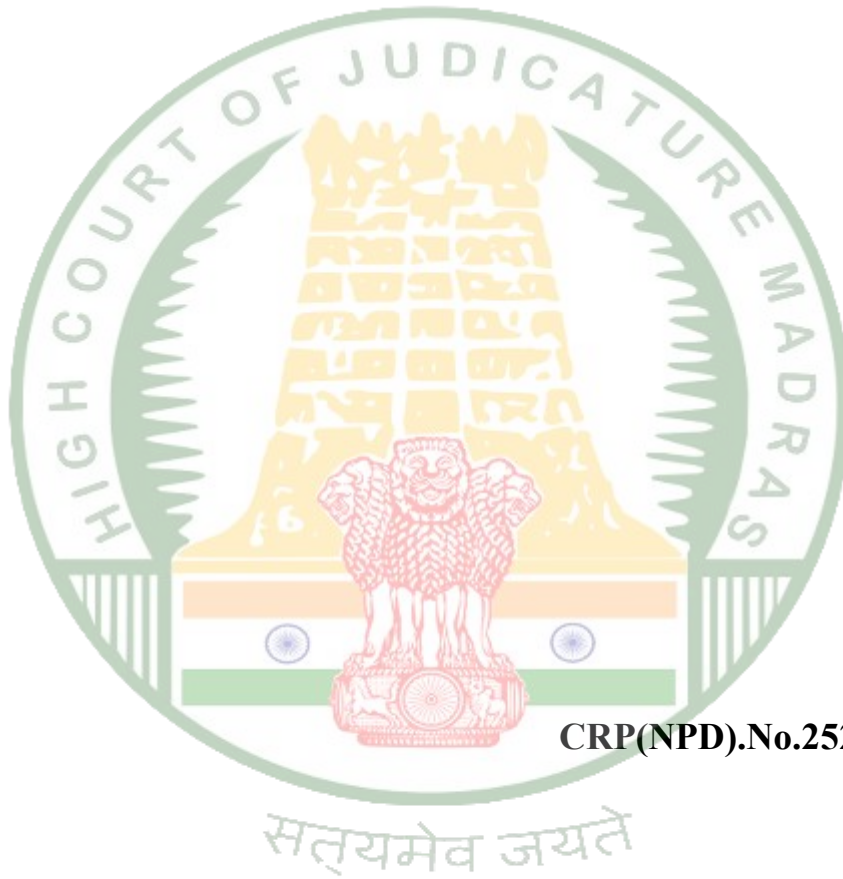
To

1. The Third Additional District and Sessions Judge, Coimbatore.
2. The Section Officer,
V.R.Section, High Court of Madras.

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G.K.ILANTHIRAIYAN,J.

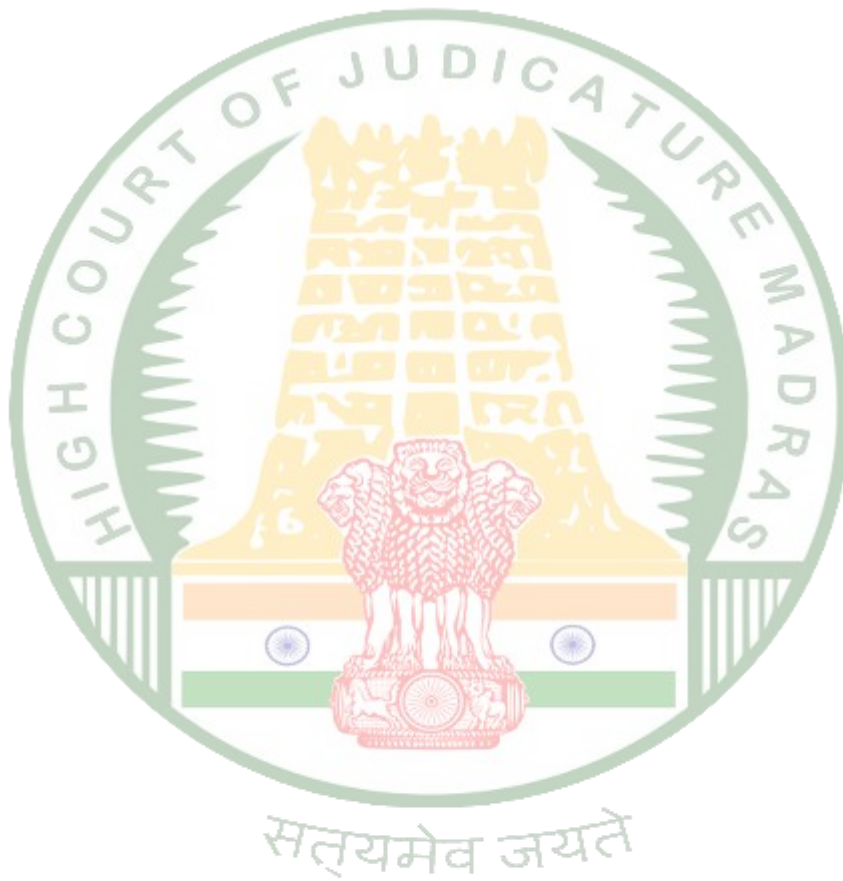
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