

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

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

C.R.P.(PD)No.4283 of 2018
and C.M.P.No.23460 of 2018

1. R.Murthy

2. S.Saravanakumar

3. S.Gunasekar

... Petitioners

Vs.

1. Kavitha

2. Jayanthi

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 29.10.2018 made in I.A.No.612 of 2018 in O.S.No.151 of 2012 on the file of the Subordinate Court, Udumalaipet Taluk, Tiruppur District.

For Petitioners : Mr.A.E.Ravichandran

For Respondents : Ms.S.Mahalakshmi
Vor Ms.R.Gowri

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order dated 29.10.2018 passed by the learned Subordinate Judge, Udumalaipet Taluk, Tiruppur District, in I.A.No.612 of 2018 in O.S.No.151 of 2012, thereby dismissing the petition for rejection of plaint.

2. The petitioners are the defendants 3-5 and the respondents are the plaintiffs. The respondents filed suit in O.S.No.151 of 2012 for partition in respect of the suit property. While pending the suit, the petitioners filed petition in I.A.No.612 of 2018 for rejection of plaint and the same was dismissed by the trial Court. Aggrieved by the same, the present Civil Revision Petition.

3. The learned counsel appearing for the petitioners submitted that the respondents filed suit for partition in respect of the suit property, which was already sold out by their mother viz., the first defendant in the suit by two registered sale deeds dated 07.06.1995 in favour of the second defendant. They also claimed title over the property by way of adverse

possession. Without the prayer of declaration declaring that the sale deeds dated 07.06.1995 as null and void and also declaring the title by way of adverse possession, the respondents are now claiming partition in the suit property which was already sold out by their mother.

3.1. In fact admittedly, they did not have any title as such they are not entitled for any share in the suit property, which was sold out by their mother. Further the respondents specifically had taken a stand that when the property was sold out by their mother, they were minors and as such the sale is not binding on the respondents. Therefore, after attaining majority within a period of three years, they ought to have filed suit. The present impugned suit has been filed in the year 2012 i.e., after 19 and 17 years from their attainment of majority respectively. Therefore, the suit is also barred by limitation.

3.2. He further submitted that after purchase of the suit property by the second defendant, he sold out the same to the petitioners herein by two registered sale deeds dated 03.11.2016 registered vide document

Nos.8659/2016 and 8661/2016. If the present impugned suit is allowed to continue no body can purchase any property, since after purchase of the suit property, the present suit has been laid after the period of 12 years that too without challenging the sale deeds dated 07.06.1995. Therefore, the present suit is nothing but clear abuse of process of law as such, he prayed to reject the plaint in O.S.No.151 of 2012 by allowing this Civil Revision Petition.

4. Per contra, the learned counsel appearing for the respondents submitted that admittedly the suit property was owned by their father and after his demise on 10.04.1991, the respondents and the first defendant in the suit were become absolute owners of the suit property as they are the legal representatives of the deceased. When the respondents were minors, the entire suit property was sold out by their mother viz., the first defendant, in favour of the second defendant by the two sale deeds dated 07.06.1995. The suit property was never sold out for the family expenses or educational expenses of the minor children.

4.1. Though the sale deed executed in favour of the second defendant, the possession and enjoyment of the suit property are with the respondents and the first defendant. Therefore, they also claimed titled over the property by adverse possession. When it being so, the respondents need not to challenge the sale deeds which were executed by the first defendant in favour of the second defendant, when they were minors. Further the petitioners filed petition for rejection of plaint on the grounds that the suit is barred by limitation and no cause of action arose. When the averments are clubbed with binding of law, it cannot be rejected on its limini. The points raised by the petitioners can be considered only during the trial by let in evidence. Therefore, the Court below rightly dismissed the petition for rejection of plaint and it does not warrant any interference from this Court. Hence he prayed for dismissal of this petition.

5. Heard, Mr.A.E.Ravhichandran, learned counsel appearing for the petitioners and Ms.S.Mahalakshmi, learned counsel appearing for the respondents.

6. The petitioners are the defendants 3 to 5 in the suit filed by the respondents for partition in respect of the suit property. Admittedly, the suit property belonged to the respondents' father and after his demise on 10.04.1991 the respondents and the first defendant in the suit were became the legal heirs. When the respondents were minors on 07.06.1995, the first defendant who is none other than their mother, sold out the entire suit property in favour of the second defendant by the registered two sale deeds dated 07.06.1995 registered vide document Nos.2136/1995 and 2137/1995. On perusal of the sale deed recital, the entire sale consideration received by the first defendant and possession of the suit property handed over on the date of sale deeds itself. It is also revealed that in respect of the suit property no encumbrance will be caused through legal heirs and no future claim made over the suit property by her legal heirs. Therefore, the possession of the suit property was already handed over to the second defendant and in turn the second defendant sold out the suit property in favour of the petitioners herein by the registered sale deeds dated 03.11.2016 registered vide document Nos.8659/2016 and 8661/2016 registered on the Sub Registrar, Udumalpet. In fact, after purchase of the

suit property, the second defendant obtained patta in his favour in respect of the suit property.

7. That apart, on perusal of the plaint except the patta issued in favour of the first defendant no other document filed along with the plaint to prove the possession and enjoyment of the suit property. Therefore, the claim of adverse possession is completely out of scope in the plaint that too without claiming any title over the property by way of adverse possession. The respondents were minors at the time of sale executed by their mother in favour of the second defendant. At the time of filing of the suit, they were aged about 37 and 34 years respectively. They attained majority in the year 1996 and 1998 itself respectively. Whereas, they filed the present suit only in the year 2012 after the period of 15 years. Therefore, the suit itself is clearly barred by limitation. Only to avoid the period of limitation, the impugned plaint is cleverly drafted without challenging the sale deed executed by their mother in favour of the second defendant as null and void.

8. Even assuming that, when the respondents were minors at the time of execution of sale deeds and the sale was not for their educational expenses or family expenses, the respondents ought to have been challenged the sale deeds and asked for partition in respect of the suit property. Therefore without the prayer of declaration declaring that the sale deeds as null and void, the respondents are not entitled for any partition. That apart, when the suit property was already sold out, it is not open to the respondents for seeking adverse possession. No one can claim adverse possession for their own property. After execution of the sale deeds and also handed over the possession of the suit property, the respondents are estopped from raising the plea of adverse possession. Therefore, they cannot claim title over the property by way of adverse possession that too without seeking the prayer for declaration to declare the title over the suit property.

9. In this regard, it is relevant to rely upon the judgment of this Court reported in **CDJ 2020 MHC 422** in the case of **Vajjiram and ors Vs. Annadurai & ors**, which reads as follows :-

“14. As held by the Hon'ble Supreme Court of India and this Court repeatedly that the minor coparcener who is made as eo nomine a party to the sale deed executed by the Karta cannot maintain a suit for partition without the prayer for setting aside the alienation. In the case on hand, on behalf of the plaintiff and the second defendant, when they were minor, the first defendant executed the sale deeds on his behalf and also on behalf of the plaintiff and the second defendant. Therefore, the plaintiff necessarily ought to have challenged those sale deeds while seeking for partition. On the well settled principles of law that the karta/manager of the hindu manager family has a right to alienate the suit property for legal necessity. If a member of the joint family challenges the alienation by the karta, he has to plead and prove that the alienation is not for legal necessity. Unless he seeks to set aside those sale deeds, the relief of partition cannot be granted”

This Court relied upon the judgment of the Hon'ble Supreme Court of India and held that minor coparcener who is made as eo-nominee a party to the

sale deed executed by the Karta cannot maintain a suit for partition without the prayer for setting aside the alienation.

10. In the case on hand, the first defendant in the suit who is the mother of the respondents herein executed sale deeds in favour of the second defendant on her behalf and also on behalf of her minor daughters viz., the respondents herein. Therefore, the respondents necessarily ought to have been challenged the sale deeds, which were executed by the first defendant in favour of the second defendant while filing the suit for partition. Therefore, the present suit is nothing but clear abuse of process of law. If the suit is allowed to continue, no one can purchase any property and necessarily face endless litigation by the legal heirs of the vendors. Therefore, the order passed by the Court below is perverse and liable to be set aside.

11. In view of the above discussion, the order dated 29.10.2018 passed by the learned Subordinate Judge, Udumalaipet Taluk, Tiruppur District, in I.A.No.612 of 2018 in O.S.No.151 of 2012 is hereby set aside

and the plaint in O.S.No.151 of 2012 is hereby rejected. Accordingly, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.06.2021

Internet : Yes

Index : Yes/No

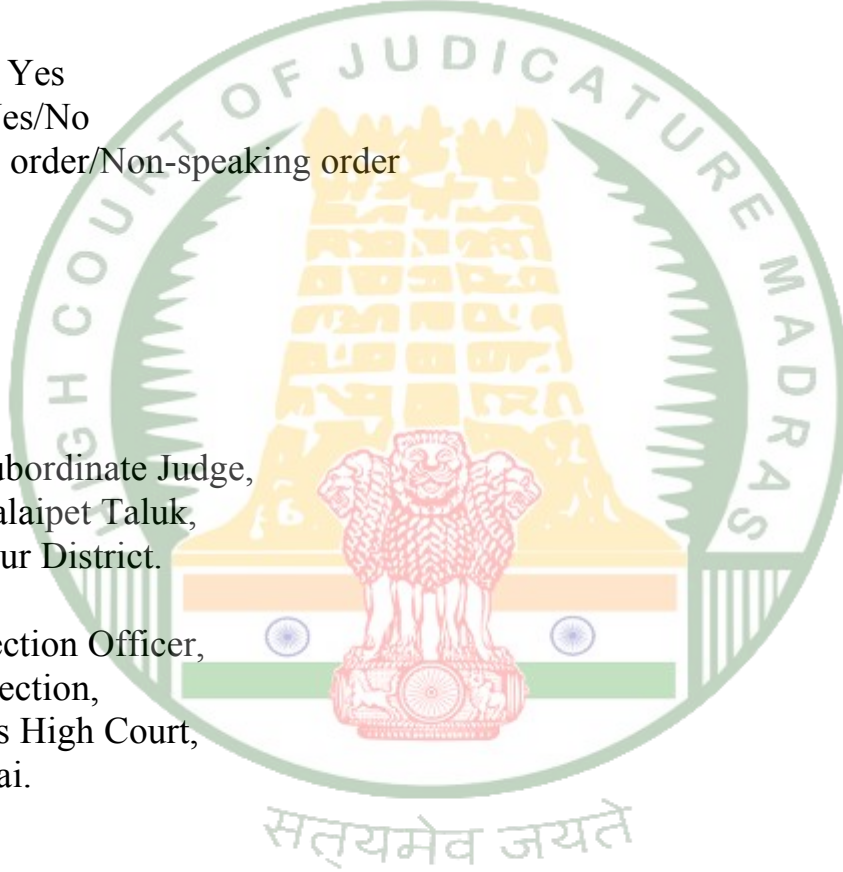
Speaking order/Non-speaking order

rts

To

1. The Subordinate Judge,
Udumalaipet Taluk,
Tiruppur District.

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

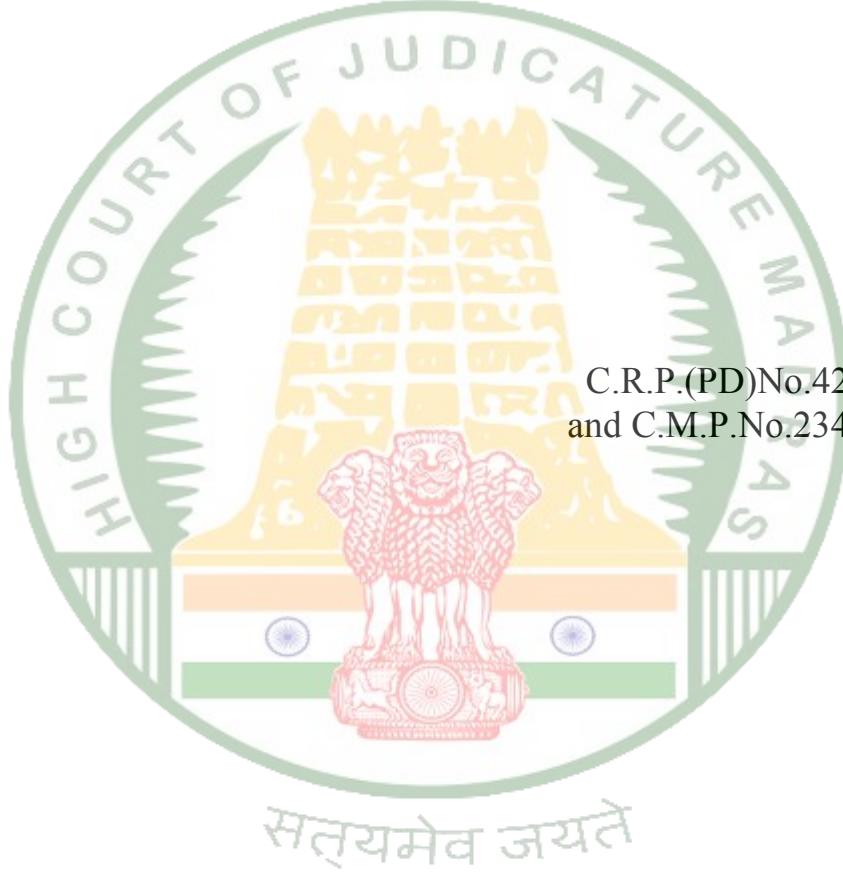


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