



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD) No.121 of 2017

and

C.M.P (MD) No.402 of 2017

WEB COPY

1.Pushpa Bai
2.J.Selvakumar
3.J.Jebasingh
4.J.Robert Singh

... Petitioners/Petitioners

Vs.

1.N.Suganthi Ransal
2.N.Anna Sneha Pukazh
3.N.Thaya Poonkamazh

... Respondents/Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to reject the plaint in O.S.No.167 of 2016 on the file of Principal District Munsif Court, Padmanabhapuram.

For Petitioners : Mr.C.Godwin
For Respondents : Mr.S.C.Herold Singh

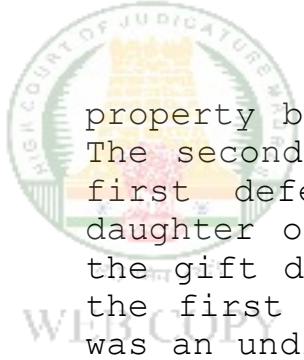
ORDER

The above application is filed invoking the superintending jurisdiction under Article 227 of the Constitution of India to reject the plaint in O.S.No.167 of 2016 on the file of the Principal District Munsif, Padmanabhapuram.

2.The facts in brief are as follows:-

(i) The revision petitioner had originally filed a suit in O.S.No.761 of 1991 on the file of the Principal District Munsif, Padmanabhapuram against the third respondent herein and one Nesian, for partition and separate possession of his share, in the suit property which was an extent of 53 cents in R.S.No.644/1 and 48 cents in R.S.No.649/6 within specified boundaries of Midalam village, Kanyakumari District.

(ii) It is the case of the plaintiffs that the first defendant had gifted the suit properties to one Jebamony, the husband of the first plaintiff and the father of the plaintiffs 2 to 5 under deeds dated 30.01.1978 and 31.08.1979. The said Jebamony died on 20.01.1990 leaving behind him surviving the plaintiff, who had inherited the property. Taking advantage of the death of the said Jebamony, the defendants were attempting to trespass into the suit



property by cutting the trees and putting up the new boundaries. The second defendant had executed the gift deed in favour of the first defendant on 04.03.1995. The first defendant is the daughter of the second defendant. This gift deed is void, since the gift deed also includes the property which has been gifted by the first defendant to the said Jebamony. Therefore, since it was an undivided interest that had been gifted, the plaintiff came forward with the suit for partition.

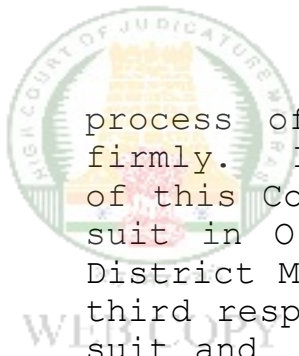
(iii) The defence to the said suit was that even if the gift deed is presumed to be a genuine one, since the death of the beneficiary was prior to the limited estate holder, the gift would automatically failed. The defendants further contended that the plaintiffs are not in joint possession of the property and that they were not entitled to the partition as claimed.

(iv) Heard the counsel on either side and perused the records.

(v) The learned Principal District Munsif by judgment and decree dated 26.08.1993 was pleased to pass a preliminary decree for partition. This judgement and decree were taken up on appeal in A.S.No.32 of 1996 on the file of the Sub Court Padmanabhapuram which ended in a dismissal and the same was once again taken up in appeal to this Court in S.A.No.1409 of 2003. This appeal was also dismissed by judgment dated 29.06.2016. Therefore, the said decree for partition had attained finality and the right of the plaintiffs in the suit property stood confirmed. After the dismissal of the second appeal on 29.06.2016, the first defendant in the suit in O.S.No.761 of 1991 and the daughters of the second defendant filed O.S.No.167 of 2016 on the file of the Principal District Munsif, Padmanabhapuram to set aside / cancel the judgment and preliminary decree passed by the Principal District Munsif, Padmanabhapuram in O.S.No.761 of 1991 with reference to item Nos.1 and 2 of the suit schedule property. On receiving the summon, the defendants who are the plaintiffs in the earlier suit had come forward with this revision.

3.It is an admitted case that the earlier suit in O.S.No.761 of 1991 has been strongly contested by the third respondent herein and the father of the respondents 1 and 2 herein. This suit has been once again filed questioning the gift deeds in favour of the Jebamony, which was the subject matter of the earlier suit. By making new allegation, the third respondent who is the first defendant in the earlier suit along with the daughters of the second defendant, are trying to once again reopen the judgment and decree in O.S.No.761 of 1991 albeit in the form of a new cause of action, which is nothing, but an illusory one.

4.A perusal of the earlier judgment would clearly show that the present suit is nothing but a re-litigation and an abuse of



process of Court. This Court should put down such litigation firmly. In the above circumstances, exercising the jurisdiction of this Court under Article 227 of the Constitution of India, the suit in O.S.No.167 of 2016 is struck off on the file Principal District Munsif, Padmanabhapuram, taking note of the fact that the third respondent herein who is the first defendant in the earlier suit and the fact that the respondents 1 and 2 are the daughters of the second defendant in the earlier suit, who had contested the earlier proceeding right upto this Court and failed.

5.In the result, this Civil Revision Petition is dismissed with the cost of Rs.10,000/- and the petitioner shall pay the same to the credit of Indian Association For the Blind, Sundarajanpatty, Alagar Koil Main Road, Arumbanur Post, Madurai-625 104, on or before 23.12.2021.

6.Post the matter for reporting compliance on 23.12.2021.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The Principal District Munsif, Padmanabhapuram.

Copy to

The Officer Incharge,

Indian Association For the Blind,

Sundarajanpatty, Alagar Koil Main Road,

Arumbanur Post, Madurai-625 104

+1 CC to M/s.C.GODWIN, Advocate (SR-38409[F] dated 13/12/2021)

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-38536[F] dated 14/12/2021)

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