



C.R.P.(PD)No.2233 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.10.2022

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

C.R.P.(PD)No.2233 of 2019

and

C.M.P.No.14030 of 2018

1. Chinnathayammal
2. K.Saravanan
3. Kumaravel
4. Kumuthavalli

.. Petitioners

Vs

1. Chinathambi
2. Dhanasekaran

..Respondents.

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order and decree dated 18.06.2018 made in I.A.No.1304 of 2015 in O.S.No.4 of 2015 on the file of the District Munsif, Pappireddipatti.

For Petitioners : Mr.G.Arul Murugan
For Respondents : Mr.S.N.Subramani



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ORDER

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This Civil Revision Petition has been filed by the defendants against the fair order and decree dated 18.06.2018 made in I.A.No.1304 of 2015 in O.S.No.4 of 2015 on the file of the District Munsif, Pappireddipatti. The said I.A. was filed to reject the plaint.

2. The case of the petitioners in short is as follows:

The Suit in O.S.No.4 of 2015 has been filed by the plaintiffs/respondents herein praying for declaration to declare that the registered Will dated 04.10.1980 executed by Kolandai Gounder and registered as Document No.37/1980 on the file of Sub-Registrar, Pappireddipatti as null and void and will not bind on the plaintiffs. The petitioners/defendants' father Kolandai Gounder has executed the said Will in their favour. Earlier the plaintiffs have filed a suit against these petitioners/defendants in O.S.No.5/1989 before the District Munsif Court, Harur, for declaration and the petitioners defended the same. The suit was dismissed on 07.10.1993. Challenging the same, the plaintiffs filed First



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Appeal in A.S.No.17 of 1997 before the Subordinate Court, Krishnagiri, which was also dismissed and they filed Second Appeal in S.A.No.886 of 2008 before this Court and the same is pending. As such, the plaintiffs had knowledge of the Will dated 04.10.1980 from the year 1989. But the plaintiffs have filed the present suit only on 05.10.2015, challenging the Will dated 04.10.1980, which is beyond the period of limitation and hence, the suit is barred by limitation. The plaintiffs have not explained the delay or stated any details about the knowledge of the Will dated 04.10.1980 or reasons as to why the same is challenged after 35 years. Hence, the petitioners filed interlocutory application in I.A.No.1304/2015 to reject the plaint but the same was dismissed by the trial Court. Hence, this C.R.P.

3. Heard the learned counsel for the petitioners/defendants and the learned counsel appearing for the respondents/ plaintiffs.

4. Learned counsel for the petitioners would submit that the respondents/plaintiffs had knowledge of the Will dated 04.10.1980 in the



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year 1989 itself, when they filed O.S.No.5 of 1989 and the Will has been furnished in the said suit by the petitioners herein. But the plaintiffs have filed this suit only on 05.01.2015, which is beyond the period of limitation and therefore, the suit is barred by law of limitation. The respondents/plaintiffs have not explained the delay as to why they have challenged the same after 35 years. Learned counsel would further submit that the validity of the Will dated 04.10.1980 has been upheld in the judgments rendered in the former suits in O.S.No.8 of 2008, O.S.No.9 of 2008 and O.S.No.44 of 2008 between the same parties and hence, the suit is barred by doctrine of *res judicata*. He would further submit that the suit has been filed suppressing the material facts and the plaintiffs have not approached the court with clean hands. The learned trial Judge has failed to give any valid and cogent reason in support of his findings rendered in the said application. Hence, the order passed in I.A.No.1304 of 2015 is liable to be set aside and the C.R.P. has to be allowed.

5. In support of his contentions, the learned counsel for the



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petitioners would rely on the following decisions:

- i) 1977 (4) SCC 467 (T.Arivandandam v. T.V.Satyapal)
- ii) 2002 (10) SCC 501 (Raj Narain sarin v. Laxmi Devi)
- iii) 2007 (5) SCC 614 (Hardesh Ores (P) Ltd. vs. Hede and Company)
- iv) 2016 (15) SCC 654 (Venkatanatha Chary v. Nalla Raji Reddy)
- v) 2021 SCC Online (SC) 238 (K.Akbar Ali v. K.Umar Khan)

6. On the other hand, the learned counsel for the respondents/plaintiffs would submit that they were not party to the proceedings in O.S.Nos. 8 and 9 of 2008. It is to be noted that when the Court is called upon to exercise the jurisdiction to reject the plaint under Order 7 Rule 11 of CPC, the averments made in the plaint and the documents filed along with the plaint which form part thereof alone, have be taken into consideration and the Court cannot consider the defence pleas or materials submitted by the defendant for the purpose of rejecting the plaint. Insofar as the plaintiffs' plea of res-judicata is concerned, there is nothing to indicate that the validity of the Will dated 04.10.1980 was



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already upheld in the former litigations arose between the same parties. At no point of time, the patta, chitta, tax receipts stand in the name of Kolandaigounder with regard to the plaint schedule properties. So Kolandaigounder has no right to execute the alleged Will. Chitta, A-Register, patta stand in the name of respondents/plaintiffs only and the respondents/plaintiffs are continuously paying tax to the authorities. The trial Judge in O.S.No.5 of 1983 had clearly held that the documents clearly proved that the respondents/plaintiffs are in possession of the suit schedule properties.

7. The suit in O.S.No.9/2008 filed by the petitioners/defendants against the respondents/plaintiffs and government authorities seeking mandatory injunction restraining the government authorities not to issue patta in favour of the respondents/plaintiffs was dismissed with costs on 28.08.2014 and the petitioners/defendants did not prefer any appeal, eventhough the court decided that the petitioners/defendants did not prove their possession and did not seek for declaration of title. Hence, this C.R.P.



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has got to be dismissed.

8. In support of his contentions, the learned counsel for the respondents/plaintiffs would rely on the following decisions:

- i) 2012 (8) SCC 701 (Bhau ram v.Janka Singh)
- ii) 2019(13) SCC 372 (Urvashiben v. krishnakant Manuprasad Trivedi)
- iii) 2020 (12) SCC 809 (Vaish Aggarwal Panchayat)
- iv) 2020 SCC Online SC 482 (Shakti Bhog Food Industries Ltd. v. Central Bank of India).

9. This Court, considered the submissions made on either side and perused the materials available on records.

10. From perusal of the records, it is seen that the respondents/plaintiffs have established that they are in possession and enjoyment of the property from the year 1975. The petitioners/defendants



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herein have not sought for declaration of title to the suit property but have sought for mandatory injunction restraining the government authorities not to issue patta in favour of the respondents/plaintiffs in O.S.No.9 of 2008 and the said suit was dismissed with costs. The revision petitioners did not file any appeal against the said judgment. The Courts below have specifically given a finding that the petitioners did not prove possession and did not seek for declaration of title. Further, the respondents/plaintiffs are continuously paying tax to the authorities. Apart from that, Chitta, A-Register, Patta stands in the name of the respondents/ plaintiffs only, whereas the revision petitioners name do not find place in the revenue records. Therefore, this Court is of the considered opinion that Kolandai Gounder was not having any right over the suit schedule property and does not have right to execute the Will. In respect of one of the issues of the respondents/plaintiffs' regarding possession, raised in O.S.No.5 of 1989, the learned trial Judge came to the conclusion that the respondents/plaintiffs are in possession of the suit schedule properties and the same was accepted by the revision petitioners/defendants in their evidence. Since the revision



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petitioners/defendants have not preferred any appeal against the dismissal of the suit in O.S.No.9 of 2008 filed by them, the judgment is binding on the revision petitioners/defendants and it is still in favour of the respondents/plaintiffs. Further, there is nothing to indicate that the validity of the Will dated 04.10.1980 was already upheld in the former litigations arose between the same parties. The decisions relied on by the learned counsel for the petitioners do not apply to the facts of the present case.

11. Under such circumstances, this Court finds that there is no illegality or infirmity in the order dated 18.06.2018 passed in I.A.No.1304 of 2015. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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



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To
The District Munsif,
Pappireddipatti.



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J.NISHA BANU, J.

(vsi)

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