



C.R.P.(PD)No.2678 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P(PD).No.2678 of 2022

and

C.M.P.No.13923 of 2022

M.Prabavathi

... Petitioner

..Vs.

1.G.Gayathri

2.G.Kaviya

3.The Sub-Registrar,

Ramakrishnarajupet Village,

Pallipet Taluk,

Thiruvallur District.

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of Constitution of India to strike off the plaint in O.S.No.332 of 2019 on the file of the Court of I Additional District Judge, Thiruvallur and allow this Civil Revision Petition.

For Petitioner : Mr.S.Vijayanand



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ORDER

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This Civil Revision Petition has been preferred seeking a direction to strike off the plaint in O.S.No.332 of 2019 on the file of the I Additional District Court, Thiruvallur.

2. Heard the learned counsel for the petitioner and perused the materials available on record.

3.The revision petitioner is the first defendant. The respondents 1 and 2 herein/plaintiffs have filed a suit in O.S.No.332 of 2019 against the revision petitioner and the third respondent herein, who are defendants 1 and 2 for partition and declaration that the partition deed dated 09.05.2012 is null and void and also for permanent injunction.

4.The revision petitioner/first defendant has filed this Civil Revision Petition by stating that the suit itself is barred by limitation and hence, the plaint should be struck off.

5. On perusal of the pleadings made in the plaint, it is seen that the



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plaintiff has stated that the cause of action for the suit arose only on 23.10.2018 when first defendant's husband Raja @ N.Manivannan died on 22.10.2018.

6. According to the plaintiff, the cause of action arose only from 23.10.2018 and the suit has been filed in the year 2019. Unless the defendants enter appearance and state before the Court as to why the suit is still barred by limitation, though the plaintiff pleads that the cause of action has arisen only on 23.10.2018, the Court cannot decide on the point of limitation.

7. Because the point of limitation is a mixed question of fact and law. There is efficacious and alternative remedy on the point of maintainability also. In that case, the revision petitioner ought to have filed the petition under Order VII Rule 7 CPC on the allegations now stated by him in this Civil Revision Petition.

8. Reliance is placed upon the decision of the Hon'ble Supreme



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Court held in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Others Vs. Tuticorin Educational Society & Others* reported in **2019 (9) SCC 538**. In the said case, it is held that the High Court should not, as a matter of discipline and prudence, exercise the power of superintendence under Article 227 of the Constitution of India, when there is a remedy available under the Code of Civil Procedure before the trial Court.

9. Hence, this Civil Revision Petition is dismissed. However, the petitioner is at liberty to file a petition under Order VII Rule 7 of CPC, if she so advised. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Speaking Order:Yes/No
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To

- 1.The I Additional District Judge,
Thiruvallur.
- 2.The Sub-Registrar,
Ramakrishnarajupet Village,
Pallipet Taluk,
Thiruvallur District.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.



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R.N.MANJULA, J.

ms

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C.M.P.No.13923 of 2022**

26.08.2022