



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 03.02.2022**

**CORAM:**

**THE HONOURABLE MS.JUSTICE P.T.ASHA**

C.R.P. (NPD) (MD) Nos.1819 & 1821 of 2012

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C.R.P. (NPD) (MD) No.1819 of 2012 :-

1.Vimala Devi

2.Parimala Gandhi

3.Pangajavalli

.. Petitioners/Respondents 4, 6 & 7  
/Defendants 4, 6 & 7 &  
Judgment Debtors 4, 6 & 7

-vs-

1.Kalayanasundari Ammal

2.Thirugnanasampantham

.. Respondents 1 & 2/Petitioners/  
Plaintiffs & Decree Holder

3.Jamila Beevi

4.Senthil Kumari

.. Respondents 3 & 4/  
Respondents 3 & 5/Defendants 3&5  
& Judgment Debtors 3 & 5

Prayer :- Petition filed under Section 115 Civil Procedure Code to set aside the fair and decretal order dated 13.08.2012 passed in E.P.No.142 of 2010 in O.S.No.172 of 1978 on the file of the Principal Sub-Court, Thanjavur.

For Petitioners : Mr.K.Sudalayandi

For RR1 & 2 : Mr.Venkataseshan

For R4 : Mr.G.Karnan

R3 : Dismissed

C.R.P. (NPD) (MD) No.1821 of 2012 :-

Senthil Kumari

.. Petitioner/5<sup>th</sup> Respondent/  
5<sup>th</sup> Defendant

-vs-

1.Kalayanasundari Ammal

2.Thirugnanasampantham

.. Respondents/Petitioners/  
Plaintiffs

T.M.Annapillai (Died)

Seethalakshmi Ammal (Died)

3.Jamila Beevi

.. Respondents/Respondents 1 to 3/  
Defendants 1 to 3

4.Vimaladevi

5.Parimalagandhi

6.Pankajavalli

.. Respondents/Respondents 4,6&7  
/Defendants 4, 6 & 7



Prayer :- Petition filed under Section 115 Civil Procedure Code to set aside the Docket Order of delivery dated 13.08.2012 passed in E.P.No.142 of 2010 in O.S.No.172 of 1978 on the file of the Principal Sub-Court, Thanjavur.

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For Petitioners : Mr.G.Karnan  
For RR1 & 2 : Mr.Venkataseshan  
For RR4, 5 & 6 : No appearance  
R3 : Dismissed  
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**COMMON ORDER**

These two Civil Revision Petitions are filed by the judgment debtors 4, 6 and 7 (C.R.P.(NPD) (MD) No.1819 of 2012) and the 5<sup>th</sup> judgment debtor (C.R.P.(NPD) (MD) No.1821 of 2012) challenging the orders dated 13.08.2012 passed in E.P.No.142 of 2010 in and by which, the learned Judge had ordered delivery of the suit property to the decree holder/respondents 1 and 2 herein.

2. The execution proceedings arise out of the decree in the suit in O.S.No.172 of 1978 on the file of the learned Principal Sub Judge, Thanjavur.

3. For ease of the understanding, the parties shall be referred to as per their litigative status before the trial court.

4. The brief resume of facts, which have culminated in the filing of the above Civil Revision Petitions, are hereinbelow set out concisely:-

4.1. The plaintiffs/respondents 1 and 2 had filed the suit in question for a declaration that they are entitled to the suit property after the life time of the 2<sup>nd</sup> defendant. Their case was that the 1<sup>st</sup> defendant in the suit viz., Annapillai was unwell in the year 1972 and was unable to manage his properties. At that juncture, three out of his five daughters were unmarried. Therefore, he wanted to make a settlement in favour of his daughters and therefore, he had made various bequests under a settlement deed dated 26.02.1972. Since the deceased Annapillai was not blessed with a son, he was fond of the 2<sup>nd</sup> plaintiff, who is none other than the son of his daughter, the 1<sup>st</sup> plaintiff. It was his wish and desire that the house property should go to the 2<sup>nd</sup> plaintiff ultimately. Therefore, he had executed a sale deed retaining a life time interest for his wife, the 2<sup>nd</sup> defendant. The terms of the settlement deed clearly provided that after the life time of the 2<sup>nd</sup> defendant, the property would vest on the 1<sup>st</sup> plaintiff for life and thereafter, absolutely on the 2<sup>nd</sup> plaintiff. The 1<sup>st</sup> defendant had no right to revoke the settlement deed. However, in the year 1978, on the instigation of the other sisters of the 1<sup>st</sup> plaintiff, the 1<sup>st</sup> defendant had executed a revocation deed on 23.07.1975. The



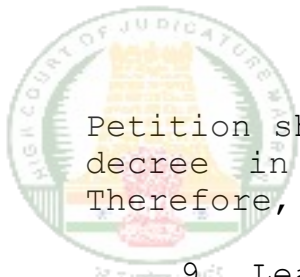
plaintiffs would submit that this revocation deed was illegal and has no backing of force. The 1<sup>st</sup> defendant was also taking steps to alienate the property, which constrained the plaintiffs to file the suit in question.

5. On entering appearance, the 1<sup>st</sup> and 2<sup>nd</sup> defendants had filed a written statement admitting the execution of the settlement deed. The 1<sup>st</sup> defendant would submit that the document in question was a Will and not a settlement and therefore, he had the right to cancel it at any point of time. In all other respects, the allegations contained in the plaint were denied. Pending the suit, Annapilali had died and thereafter, defendants 3 to 7 were brought on record. They had also reiterated the contentions raised by defendants 1 and 2. Defendants 4 to 7 also submitted that the 2<sup>nd</sup> plaintiff had filed another suit in O.S.No.171 of 1978 claiming a title under the very same settlement deed dated 26.02.1972. They would contend that the two suits are in respect of the very same subject matter.

6. The learned Additional Judge, Thanjavur, by his judgment and decree dated 31.12.1984 was pleased to dismiss the suit in O.S.No.172 of 1978. Aggrieved by which, the plaintiffs had filed first appeal in A.S.No.59 of 1986. By judgment and decree dated 28.10.1987, the learned District Judge, Thanjavur, was pleased to set aside the judgment and decree in O.S.No.172 of 1978 and decreed the suit as prayed for. This judgment and decree was challenged before this Court in S.A.No.845 of 1988. The second appeal was dismissed at the admission stage itself on 02.08.1988. Therefore, the judgment and decree as reversed in A.S.No.59 of 1986 had become final. After the judgment and decree in S.A.No.845 of 1988, the mother of the plaintiffs died on 04.01.2009.

7. The petitioners in C.R.P.(NPD) (MD) No.1819 of 2012 had entered into possession of the property under the guise of taking care of the mother. The above referred judgments had confirmed that the property scheduled in O.S.No.172 of 1978 belongs to the 1<sup>st</sup> plaintiff for her life time and thereafter was to vest on the 2<sup>nd</sup> plaintiff. Therefore, on the demise of her mother the property had fallen to her possession (the 1<sup>st</sup> petitioner in C.R.P.(NPD) (MD) No.1819 of 2012). The plaintiffs had come forward with the impugned execution petition in E.P.No.142 of 2010. The 1<sup>st</sup> petitioner in C.R.P.(NPD) (MD) No.1819 of 2012 had filed their counter, but however, the learned Principal Subordinate Judge, Thanjavur by the impugned orders was pleased to allow the execution petition directing delivery. Challenging these orders, the present revisions are filed.

8. The grounds on which the defendants would attack the execution proceedings is on the ground that (i) the document in question is not a settlement deed, but is a Will; (ii) Execution



Petition should have been filed within 12 years from the date of the decree in S.A.No.845 of 1988, i.e., 12 years from 02.08.1988. Therefore, the present execution proceedings is clearly barred.

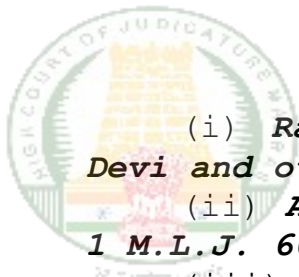
9. Learned counsel appearing for the revision petitioners in C.R.P. (NPD) (MD) No.1819 of 2012 would reiterate the above contentions that the document is only a Will and not a settlement deed and that the execution proceedings had to commence within 12 years from the date of dismissal of S.A.No.845 of 1988. Another defence, which was taken was that only a smaller extent was settled on the plaintiffs whereas, the execution proceedings is filed for the larger extent. These common arguments had been adduced on the side of the 5<sup>th</sup> judgment debtor.

10. Per contra, Mr.M.V.Venkataseshan, learned counsel appearing on behalf of plaintiffs would submit that the enforceability of the execution petition started only upon the death of the 2<sup>nd</sup> defendant/mother. He would referred to Article 136 of the Limitation Act, which reads as follows:-

| Description of suit                                                                                                     | Period of Limitation | Time from which period begins to run                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court. | Twelve years         | [When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: |

11. He would therefore, submit that a life time interest had been given under the deed in question and as a result they could take steps to execute the decree only with effect from 04.01.2009. The execution proceedings had been filed in the year 2010. Therefore, it is well within time.

12. As regards the argument that a larger extent is sought to be executed, the learned counsel rebutted the argument that a larger extent of land was sought to executed, when the settlement deed is only for a smaller extent by contending that the suit in O.S.No.172 1978 is with reference to the larger extent, which has been decreed in his favour and which they now seek to execute. Therefore, the grounds of attack are not sustainable. In support of his contentions that the execution petition had to be filed within a period of 12 years from the date of the decree, the learned counsel referred to the following judgments:-



- (i) **Radhey Shyam Jaiswal (dead) and other vs. Smt. Ram Dulari Devi and others [(1997) 1 M.L.J. 22];**  
(ii) **A.A.A.Kotchadainaidu and another vs. Akkayanaicker [(1998) 1 M.L.J. 666]** and  
(iii) **Joshi & Co. vs. UCO Bank [(2002) 3 M.L.J. 661]**

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13. Heard the counsels on either side and perused the records. There is no quarrel on the proposition that the execution proceedings have to be filed within 12 years. However, a reading of Article 136 of the Limitation Act would indicate that the 12 year period starts running from the date when the decree become enforceable. In the instant case, admittedly, under the terms of the settlement deed, which has now been upheld by the decrees of the Court below, the property for life had to vest upon the mother, the 2<sup>nd</sup> defendant and only after her demise, could the plaintiffs have any right over the same. Admittedly, the 2<sup>nd</sup> defendant died on 04.01.2009 and therefore, the judgment and decree become enforceable from the said date. As regards the argument that a larger extent was sought to be executed, when the settlement deed was only with reference to the thatched house, the answer would be that the suit in O.S.No.172 of 1978 which was contested right up to the Court was with reference to the larger extent and the plaintiffs have sought to execute this decree within a year of the mother's demise when the same had become enforceable. The lower appellate court and this Court in the second appeal have upheld that the document is a settlement deed and not a Will. Therefore, in the light of the decree, this argument would also pale into insignificance.

14. It is brought to the notice of this Court that the plaintiffs are in possession of the entire extent of property except the house, which is in possession and enjoyment of the 1<sup>st</sup> petitioner, Vimala Devi in C.R.P.(MD) No.1819 of 2012. She is over 80 years old and is not keeping very good health. Therefore, the Court had directed the plaintiffs not to evict the said Vimala Devi from the premises till her life time. The learned counsel for the plaintiffs agreed to the same and therefore, he was directed to file an affidavit to this effect. The learned counsel has promised to file the affidavit by 04.02.2022. This affidavit has also been filed on 03.02.2022 itself after the orders were pronounced. Therefore, these Civil Revision Petitions are dismissed and the undertaking given by the decree holders not to disturb the possession of Vimala Devi till her time time is recorded. No costs.

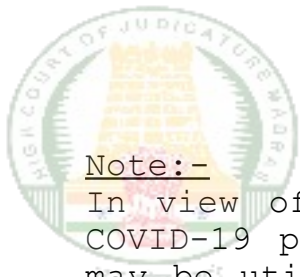
Sd/-

Assistant Registrar (RECORDS)

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/ /2022

Sub Assistant Registrar(CS)



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 Sub Judge, Thanjavur.

+2 CC to M/s.M.V.VENKATASESHAN, Advocate ( SR-4143[F] dated 04/02/2022 )

+1 CC to M/s.K.SUDALAIYANDI, Advocate ( SR-4333[F] dated 04/02/2022 )

C.R.P. (NPD) (MD) Nos.1819 & 1821 of 2012

Dated: 03.02.2022

\_SS/02.03.2022 : 6P/5C