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A.S.No.352 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

A.S.No.352 of 2015

1.Angammal (Died)

2.Alamelu

3.N.Alimuthu

4.D.Rajakumaran

5.Mariammal

.. Appellants

(A3 to A5 are brought on record as LR's of the deceased/
first appellant vide order dated 27.10.2022 made in
C.M.P.No.8608/21 in A.S.No.352/15)

Versus

1.Rajappan (Died)

2.Kullammal (Died)

3.Krishnan @ Raji

4.Dhanapal

5.R.Murugesan

6.Pushpa

7.R.Kullappan

8.M.Vinoth Nanthini

9.G.Murugesan

10.Pachiyammal

11.Govindasamy

12.R.Venkatachalam

13.G.Bakkiyam

14.Muthupillai

15.Amutha

16.G.Ranganathan

17.Vijaya

18.Sellammal



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19.M.Muthupaiyan
20.M.Govindan
21.M.Kumar
22.M.Krishnan

23.The Manager,
Axis Bank Limited,
Salem Branch,
Salem – 7.

.. Respondents

Prayer: Appeal Suit has been filed under Section 96 read with Order 41 Rule 1 & 2 of CPC against the order dated 22.01.2015 passed in I.A.No.1576 of 2013 in O.S.No.10 of 2013 by the I Additional District Court, Salem.

For Appellants : Mr.G.Ethirajulu

For R3 to R11 : Mr.M.Elango

For R18 to R22 : Mr.K.Ramesh

For R13 to R17 & R23 : No Appearance

R12 (no such person)

R1 & R2 (died)

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The plaintiffs in O.S.No.10 of 2013 on the file of I Additional District Judge, Salem, are an appeal aggrieved by the order made by the learned I Additional District Judge, Salem, in I.A.No.1576 of 2013, an application filed under Order VII Rule 11 of Civil Procedure Code seeking rejection of the plaint.



2. The suit in O.S.No.10 of 2013 was laid by the plaintiffs, who are the daughters of one Kullappa Gounder, seeking partition and separate possession of their 2/5th share in the suit 'A' and 'B' schedule properties. Several other prayers were also sought for declaration of certain documents as null and void.

3. The plaintiffs contended that the suit properties belonged to the joint family, of which, Kullappa Gounder was the manager. The title of the joint family was traced to various transactions, by which, Kullappa Gounder dealt with several other properties and purchased the suit properties. As regards suit 'A' schedule properties, it was contended that they belonged to the joint family and on the death of Kullappa Gounder, the plaintiffs would be entitled to a share in the said properties. So far as the 'B' schedule properties are concerned, since they stood in the name of the first defendant/K.Rajappan, son of Kullappa Gounder, it was contended that those properties were purchased in the name of the first defendant from and out of the joint family resources and as such, they also belonged to a joint family.

4. The suit was resisted by the defendants contending that on the death of Kullappa Gounder on 14.07.1980, the daughters of Kullappa Gounder had executed a release deed relinquishing their interest in the joint family properties and the sons K.Rajappan, namely, first defendant and two other sons, namely, Manickam and



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Govindan, had entered into a document of partition on 13.10.1980 and hence, the plaintiffs are not entitled to a share.

5. Upon receipt of notice, the defendants filed an application in I.A.No.1576 of 2013 seeking rejection of plaint on the ground that the suit is barred by limitation, it does not disclose cause of action and it is barred by law. The learned Trial Judge, by the impugned order in this appeal, allowed the application and rejected the plaint. The learned Trial Judge, in the process of deciding the application, dealt with the issues that should have been decided in the suit, that is, issues relating to the validity of the release deed said to have been executed by the plaintiffs, the effect of the partition of the year 1980 on the rights of the plaintiffs, and concluded that the suit is liable to be rejected.

6. Order VII Rule 11 enables the Court to reject the plaintiff on certain specific grounds and they are;

- (i) where the suit does not disclose any cause of action; and
- (ii) Where the suit appears from the statement in the plaint to be barred by any law;



7. It is not the case of the defendants that clauses (b) and (c) of Order VII Rule 11 would apply to the case on hand. It should be either Order 7 Rule 11(a) or Order 7 Rule 11(d). The plaintiffs did not disclose the execution of the release deed in the plaint. The same was projected as defence in the written statement. A release deed is a non-testamentary instrument requiring attestation. It is fundamental principle of law that a document that requires attestation has to be proved as required under Section 68 of the Evidence Act. Therefore, suppression or non-disclosure of the release deed by the plaintiffs would not offer a ground for rejection of the plaint.

8. The next ground on which the plaint has been rejected is that it is barred by limitation. No doubt limitation can be a ground for rejection of plaint. In order to enable the court to reject the plaint it should be shown that the suit on the face of it is barred by limitation without proof of any other fact. That is not the case here. The declaratory prayers, in our opinion, are redundant. Once the right of the plaintiffs, as daughters of the Kullappa Gounder, is decided, thereafter, the validity of the instruments that had been created or entered into between the sons of Kollappa Gounder will have to be gone into. No doubt, there is a partition deed entered into between the defendants on 13.10.1980. What would be the effect of the partition deed on the shares of the daughters after the advent of Act 39 of 2005 and the effect of the judgment of the Hon'ble Apex Court in *Vineeta Sharma Vs. Rakesh sharma*



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and others [2020 (9) SCC 1] on the shares of the plaintiff will have to be gone into.

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9. We are, therefore, of the considered opinion that the rejection of the plaint in the case on hand on the ground of limitation and non-disclosure of facts or non-disclosure of cause of action, has to be necessarily set aside. The appeal is therefore allowed. The order of the Trial Court rejecting the plaint is set aside. The suit will stand restored. The defendants will have 30 days from the date of receipt of a copy of this order to file the written statement and proceed with trial. The Trial Court shall conduct the trial expeditiously since the suit is of the year 2013. It is made clear that the Trial Court shall not be influenced by any of the observations made by us in this order or by the Trial Court in the order rejecting the plaint. No Costs. Connected C.M.P.No.9128 of 2023 is closed.

(R.S.M., J.) (R.K.M., J.)
05.07.2023

rkm
Index:yes/no
Speaking/Non-speaking
Neutral citation: yes/no

To
The I Additional District Court,
Salem.



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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.
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