



CRP (PD) No.900 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2023

Pronounced on : 28.06.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

CRP (PD) No.900 of 2023 and
CMP No.6745 of 2023

1. L.Sekar
2. L.Selvam

... Petitioners

Vs.

L.Porselvi

... Respondent

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, seeking to set aside the dismissal order dated 05.12.2022 in I.A.No.01 of 2021 in O.S.No.1675 of 2021 on the file of the XX Additional District and Sessions Judge, City Civil Court, Chennai and consequently dismiss the above suit.

For Petitioners : Mr.S.Dhakshinamoorthy

For Respondent : Mr.K.Kulandai velu



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ORDER

This revision is filed aggrieved by the dismissal of I.A.No.1 of 2021 in O.S.No.1675 of 2021 on the file of the XX Additional District and Sessions Judge, City Civil Court, Chennai which was filed by the petitioners / defendants to reject the plaint under Order VII Rule 11 C.P.c.,

2. The respondent/plaintiff has filed a suit for partition of the schedule of properties and to set aside the settlement deed, dated 01.12.2009 registered vide Document No.2639/2009. Originally one C.Loganathan and his first wife L.Saroja along with the plaintiff and the defendants have been residing in the schedule of property. The said property was purchased in the name of L.Saroja from the Tamilnadu Slum Clearance Board by virtue of the Lease cum Sale Agreement, dated 02.12.1998 and sale deed dated 11.02.1998. Since then all the family members have been in possession and enjoyment of the property. The said Saroja has executed a registered Settlement Deed on 02.12.2009 in Document No.2639 of 2009 at SRO, Ashok Nagar, Chennai, settling the property exclusively in favour of the



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petitioners/defendants who are the sons of the said Saroja and Loganathan.

The plaintiff is the daughter of Saroja and sister of the petitioners herein.

3. It is the case of the respondent/plaintiff that the schedule of property though registered in the name of her mother L.Saroja, it was registered on behalf of the family members and her father Loganathan also paid instalments in respect of the said property and thereby the respondent/plaintiff also gets a share and hence filed a suit for partition of the schedule of property among herself and her brothers/petitioners herein and consequently she has sought for cancellation of the registered settlement deed executed by her mother in favour of the petitioners.

4. The case of the petitioners/defendants on the other hand is that the schedule of property is the exclusive property of their mother L.Saroja by virtue of the Sale Deed, dated 11.02.1998 and she being a exclusive owner, she has every right to settle the property in favour of the petitioners / defendants and thereby the respondent/plaintiff cannot seek for partition of the schedule of property. It is also the case of the petitioners/defendants that



the settlement deed dated 01.12.2009 executed by her mother to the knowledge of the respondent/plaintiff and she has not taken any action thereby she has no cause of action and limitation to seek for cancellation of the settlement deed.

5. Heard both sides and perused the materials available on record.

6. As already submitted by the counsel for the petitioner, the respondent/plaintiff may not be having limitation to seek for cancellation of the registered Settlement Deed executed by Mrs.Saroja in favour of the petitioners / defendants on 01.12.2009, since the limitation seeking cancellation, expires after three years of its execution. However, the question at the first place is to be considered as to whether the respondent / plaintiff is aware of the fact that her mother has executed the registered Settlement deed or not. Secondly, according to the respondent/plaintiff, the suit schedule property is a joint family property. In case if the respondent/plaintiff succeed in proving that the suit schedule property is a joint family property then the registered settlement deed whether it is



declared as null and void or not, it becomes a document through which no property can be settled because if the property is a joint family property, Mrs.Saroja will have no right to execute the registered settlement deed in respect of entire schedule of property. Therefore, prior to considering the grounds raised by the petitioners / defendants, seeking for rejection of the plaint on the ground of not having cause of action and limitation, it is required to be held that the suit schedule property is not a joint family property and that the respondent/plaintiff was having knowledge about the execution of the registered settlement deed by her mother in favour of the petitioners/defendants.

7. In order to hold as to the above nature of the property as to whether it is a the joint family property or exclusive property of Saroja, full-fledged enquiry is required to be conducted after framing appropriate issues. Similarly, the question as to whether the respondent / plaintiff has got knowledge about the execution of the registered settlement deed by Saroja in favour of the petitioners/defendants is also the question of fact which will have to be decided after full-fledged enquiry. As observed above, unless



and until the above two aspects are settled and decided, the question as to whether there is a cause of action for the plaintiff or whether the plaintiff has got limitation to question the settlement would arise. Therefore, when there are issues to be resolved only after full-fledged trial on account of mixed question of fact, in this application seeking for rejection of the plaint cannot be considered. Further the application seeking rejection of plaint will have to be considered only basing on the pleading placed before Court by the plaintiff. The contents of the written statement and the contents of the affidavit filed by the defendants in an application seeking rejection of the plaint shall not be considered to see whether the plaint can be rejected.

8. The plain reading of the plaint, it would reveal that the plaint schedule property is not the exclusive property of Saroja and the plaintiff is not aware of the fact that Mrs.Saroja has executed the settlement deed. If these two aspects are accepted *in toto*, then the plaintiff will have a case to proceed with and prove her contentions during the course of trial. In case, if the petitioners / defendants contention is accepted then the issues raised by the plaintiff will have to be dealt. Therefore, considering the pleadings of



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the plaint exclusively, this Court is of the opinion that all the issues raised by the petitioners / defendants required to be debated only during the course of trial and they cannot be decided in the application for rejection of the plaint.

9. In view of the discussions, the order of the trial Court does not suffer any infirmity and the revision fails and it is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

28.06.2023

vum
Index: Yes/No
Speaking order / Non speaking order

To

The XX Additional District and Sessions Judge,
City Civil Court, Chennai



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DR.D.NAGARJUN, J.

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