



C.R.P.No.2818 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 14.03.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.2818 of 2019
and CMP.No.18493 of 2019

S.Neelannarayanan ... Petitioner / 1st Defendant / Petitioner

Vs.

1.Ezhumalai

2.Rekha

... Respondents / Plaintiffs / Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 25.07.2019 made in I.A.No.819 of 2018 in O.S.No.157 of 2014 on the file of the Additional District Munsif Court, Tindivanam, by allowing this civil revision petition.

For Petitioner : Mr.R.Agilesh
For Respondents : No appearance

ORDER

The first defendant in O.S.No.157/2014 on the file of Additional District Munsif Court, Tindivanam, has preferred this revision challenging the order dismissing his application filed for rejecting the plaint.



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2. The material facts of the case is that :

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- The suit is laid for declaring that the sale deed dated 29.04.1999 executed by the second defendant in favour of the first defendant is null and void, and also for declaration of title of the plaintiffs, based on the settlement deed dated 19.03.1991, and for recovery of property.
- The suit property originally belonged to a certain Chinnappa Naidu. His daughter is the second defendant. Third defendant is the husband of the second defendant and plaintiffs are their children.
- On 19.03.1991, Chinnappa Naidu executed a settlement deed as regards the suit property in favour of the plaintiffs. The plaintiffs are stated to be born on 10.10.1988 and 13.06.1989.
- While the plaintiffs were minor, the second defendant, as guardian for her minor children, had sold the property in favour of the first defendant vide sale deed dated 29.04.1999.
- On attaining majority, the plaintiffs have laid the suit for cancellation of the sale deed referred to above and for declaration of their title on the basis of the settlement deed of their maternal grandfather Chinnappa Naidu.
- The first defendant, the purchaser under the sale deed dated



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29.04.1999, has come forward with I.A.No.819/2018 for rejection of
plaint on the ground that the suit is barred by limitation. This was
resisted by the plaintiffs. Consequently, vide order dated
25.07.2019, the trial Court dismissed the same.

This is now under challenge in this revision.

2. Heard the learned counsel for the revision petitioner. The respondents
were served with notice, but they did not choose to appear.

3. The learned counsel for the revision petitioner submitted that under
Article 60 of the Limitation Act, the limitation prescribed for filing a suit to
set aside any transfer of property by a guardian of ward, is three years from
the date of the ward attaining majority, and not three years from the date of
knowledge of such transfer. The trial Court has made a fundamental error
in holding that the suit is maintainable from the date of knowledge of
alienation made in 1999. He also circulated the judgment of a First Bench
of this Court in ***Dr.L.Ramachandran and another v. K.Ramesh & others***
[2015-4-L.W.585].

4. When a suit is barred by a law under Order VII Rule 11(d), the plaint is



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liable to be rejected. Ordinarily, the point of limitation is considered as a mixed question of law and fact, but, it depends on the fact, situation of each particular case. So far as the present case is concerned, going by the very allegation in the plaint, the suit ought to have been filed in 2006 and 2007, but, the suit is laid only in 2014, and hence, the suit is barred in terms of Article 60 of the Limitation Act.

5. In conclusion, this Court finds merit in the submission of the learned counsel for the revision petitioner. According, the civil revision petition is allowed, and suit filed by the plaintiffs in O.S.No.157/2014 is hereby rejected. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2023

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking order
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To:

1.The Additional District Munsif
Tindivanam.



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2.The Section Officer
VR Section, High Court, Madras.

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N.SESHASAYEE.J.,
ds

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