



C.R.P.(MD)No.46 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.46 of 2019
and
C.R.P.(MD)No.235 of 2019

1.Perumal
2.Malarkodi
3.Sivasamy ... Petitioners / Petitioners/Plaintiffs

Vs.

1.Ponnusamy
2.Pappayee
3.Kaliammal @Chinnappillai
4.Soliappan
5.Subramani
6.Rasappa Gounder
7.Pappayee
8.Shanthi
9.Selvi
10.Sakthivel
11.Vasanthi ... Respondents / Respondents/Defendants



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Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 03.11.2018, passed in I.A.No.708 of 2018 in O.S.No.25 of 2012 on the file of the Principal Subordinate Judge, Karur.

For Petitioners : Mr.M.P.Senthil

For Respondents : **Mr.V.Balaji**

ORDER

The instant Civil Revision Petition has been filed against the order, dated 03.11.2018, passed in I.A.No.708 of 2018 in O.S.No.25 of 2012 on the file of the Principal Subordinate Judge, Karur.

2. The revision petitioners herein are the petitioners /plaintiffs and the respondents herein is the respondents / defendants before the Court below.

3. For the sake of convenience, the parties are referred to according to their litigative status before the Court below.



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4. It appears that the plaintiffs have filed a suit for the relief of partition. The said suit was resisted by the defendants and while being so, they have contended that the first defendant executed a gift deed in favour of the 8th defendant. According to the plaintiffs, there was no such gift settlement and that alleged gift settlement will not bind the plaintiffs. Therefore, he moved an application for amendment to declare the alleged gift settlement, dated 22.09.2011 is null and void. The said application was resisted by the defendants on the ground of limitation.

5. The Court below after hearing either side has ultimately dismissed the amendment application.

6. Aggrieved with the said order, the plaintiffs have approached this Court by way of this Civil Revision Petition.

7. The learned counsel for the plaintiffs would submit that the very amendment sought for in the plaint will not change the nature of



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the suit, therefore would submit that, the very finding of the Court below that the amendment sought for is hit by the limitation is erroneous.

8.Per contra, the learned counsel for the defendants would submit that according to Article 58 of the Limitation Act, the application to set aside the sale deed should have been filed within a period of three years from the date when the right to sue first accrues. The learned counsel for the defendants would submit that they have stated about the gift settlement in their written statement, as early as on 28.06.2012, and it is also the submission of the learned counsel for the defendants that based upon the said contention, the plaintiffs themselves impleaded, the 8th defendant / Shanthi by filing an application in I.A.No.723 of 2013, vide order, dated 25.09.2014. In spite of that the application, the amendment application came to be filed only during 2018, after the period of 3 years from the first date when the plaintiffs have knowledge about the document. Therefore, would submit that the amendment application is liable to be dismissed and prayed to confirm the order of the Court below.



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9. I have given my anxious consideration to the either side submissions.

10. At this juncture, the learned counsel for the plaintiffs would rely upon the judgment of the Hon'ble Supreme Court reported in *AIR-1957-SC-357 (L.C.Leach & Co.Ltd V. Jardine Skinner & Co.)* and *AIR-1957-SC-363 (Pirgonda Hongonda Patil V. Kalgonda Shidgonda Patil)*, *2009-5-LW-510 (Hariprasad V. Uma Keshav)* and *2002-7-SCC-559 (Sampath Kumar V. Ayyakannu)* and would contend that in all those above cases, even after the period of limitation, the Hon'ble Supreme Court has permitted the amendment. This Court has carefully gone through those judgments. The facts of the above referred cases is not applicable to the facts in hand. Because in all those reported judgment the structure or character of the suit is not altered what they wanted is only the nature of relief.

11. In this regard, it is appropriate to refer the judgment referred in *2001-6-SCC-163 (Vishwambhar and Ors. V. Laxminarayan*



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(Dead) through L.Rs. and Anr.). The relevant portion of the judgment is as follows-

“23. On a fair reading of the plaint, it is clear that the main fulcrum on which the case of the plaintiffs was balanced was that the alienations made by their mother-guardian Laxmibai were void and therefore, liable to be ignored since they were not supported by legal necessity and without permission of the competent court. On that basis the claim was made that the alienations did not affect the interest of the plaintiffs in the suit property. The prayers in the plaint were inter alia to set aside the sale deeds dated 14.11.1967 and 24.10.1974, recover possession of the properties sold from the respective purchasers, partition of the properties carving out separate possession of the share from the suit properties of the plaintiffs and deliver the same to them. As noted earlier, the trial court as well as the first appellate court accepted the case of the plaintiffs that the alienations in dispute were not supported by legal necessity. They also held that no prior permission of the court was taken for the said alienations. The question is in such circumstances are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the Court, transfer by sale



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any part of the immovable property of the minor. In sub-section (3) of the said section it is specifically provided that any disposal of immovable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold then a suit without such a prayer was of no avail to the plaintiffs. In all probability realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, plaintiff no.2 Digamber attained majority on 5th August, 1975 and Vishwambhar, plaintiff no.1 attained majority on 20th July, 1978. Though the suit was filed on



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30th November, 1980 the prayer seeking setting aside of the sale deeds was made in December, 1985. Article 60 of the Limitation Act, prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial Court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digambar the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December, 1985) by introducing such a prayer by amendment of the plaint the prescribed



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period of limitation for seeking such a relief had elapsed. In the circumstances the amendment of the plaint could not come to the rescue of the plaintiff.

From the averments of the plaint it cannot be said that all the necessary averments for setting aside the sale deeds executed by Laxmibai were contained in the plaint and adding specific prayer for setting aside the sale deeds was a mere formality. As noted earlier, the basis of the suit as it stood before the amendment of the plaint was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaint was allowed”

(Emphasis supplied by this Court)

As per the above judgment, the Hon'ble Supreme Court after discussing various aspect has repelled, the prayer for amendment.

12. At this juncture, it is appropriate to refer Article 58 of the Limitation Act. It mandates three years to file suit, from the date when the right to sue first accrues, to obtain any other declaration.



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13. Here, the plaintiffs came to know about the settlement deed, during 2013, while the first defendant filed the written statement. Thereafter, the plaintiffs filed an impleading application to implead the eighth defendant in I.A.No.723 of 2013 vide order dated 25.09.2014. Subsequently, the pleading was also amended in I.A.No.738 of 2014, dated 17.02.2015. But, unfortunately, the amendment application came to be filed during July-2018, after a period of three years from the date when the plaintiffs first knew about the existence of the settlement deed.

14. In view of the above settled legal principles, this Court is of the firm view that the finding of the Court below, dismissing the amendment application is liable to be confirmed.

15. In the result, the instant Civil Revision Petition stands **dismissed**. However, the dismissal of the instant Civil Revision Petition will not be a bar to the revision petitioners herein, to take any other defence or any other plea according to law. In that event the Court



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below may decide the same, according to it's merits. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

11.09.2023

NCC : Yes/No
Index : Yes/No
Ls

To

1.The Principal Subordinate Judge,
Karur.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

Order made in
C.R.P(MD)No.46 of 2019

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