



C.R.P(MD)No.1248 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1248 of 2023

and

C.M.P(MD)No.6083 of 2023

K.K.Pichumani

...Petitioner

Vs.

P.Vedavalli @ Aishwarya

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the decreetal and fair order, dated 06.10.2021 passed in I.A.No.2 of 2021 in O.S.No.251 of 2021, on the file of the II Additional District Munsif, Tiruchirappalli.

For Petitioner : Mr.P.Raja

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order, dated 06.10.2021 passed in I.A.No.2 of 2021 in O.S.No.251 of 2021, on the file of the II Additional District Munsif, Tiruchirappalli.



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2. The petitioner is the plaintiff before the II Additional District Munsif Court, Thiruchirappalli in O.S.No.251 of 2021. The said suit was filed for a bare injunction against the respondent herein, who is the petitioner's wife to restrain the respondent from interfering with the peaceful possession of the property, which was settled by the petitioner in favour of the respondent under settlement deed, dated 13.06.2013 vide Document No.4242 of 2013.

3. In the suit, the petitioner filed an application in I.A.No.2 of 2021 under Order 2 Rule 2 of C.P.C., preserving his rights to file a separate suit for cancellation of the settlement deed, dated 13.06.2013 vide Document No.4242 of 2013. By the impugned order, the II Additional District Munsif Court, Thiruchirappalli has dismissed the application with the following observations:

"4.Determination:

Heard bothside document perused. Admittedly the present petition has been filed under Order 2 Rule 2 CPC, seeking for the permission to file a separate suit for cancellation of the settlement deed dated 13.06.2013. The petitioner contended that, he had settled the suit property in the name of the respondent, through registered settlement deed dated 13.06.2013 registered in Document No.4240/2013, out of force and coercion. But now, the petitioner is intended to cancel the above settlement, and he could not readily source the fund for payment fo Court fee. Hence, he had filed this suit for permanent injunction,



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and seeks for permission to file separate suit for cancellation of settlement deed at later point of time.

6.It is evident form the averment in the petition, the petition mentioned settlement deed was executed in the year of 13.06.2013, and the petitioner filed this petition in the year 2021. Admittedly the period of limitation for cancellation of deed is 3 years from the date of knowledge, the petitioner himself executed the deed in the year 2013, but claim that the had executed out of force. He should have taken steps to cancel the same immediately. From the plain averments of petitioner the petition claim is clearly barred by law of limitation. Hence the Court is inclined to dismiss the petition.

In the result petition is dismissed. No cost."

4. The learned counsel for the petitioner submits that the II Additional District Munsif Court, Thiruchirappalli, ought to have first passed orders in I.A.No.2 of 2021 before numbering the suit. However, the Court has dismissed the application after numbering the suit. If the application was dismissed before numbering the suit, the petitioner would have amended the plaint and filed a fresh plaint by incorporating the prayer for cancellation of the settlement deed, dated 13.06.203 vide Document No.4242 of 2013. It is further submitted that the trial Court has also erred in making the observations on merits at the time of disposal of the above application for filing a separate suit seeking a leave of the Court to file a separate suit for cancellation of the aforesaid settlement deed, dated 13.06.2013 vide Document No.4242 of 2013.



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5. I have considered the arguments advanced by the learned counsel for the petitioner.

6. Although, the procedure followed by the II Additional District Munsif, Tiruchirappalli is irregular, nevertheless, the only remedy available to the petitioner is to amend the plaint by incorporating the prayer for cancelling the settlement deed, dated 13.06.2013 registered as Document No.4242 of 2013 on the file of the SRO, Woraiyur, Tiruchirappalli.

7. The present Civil Revision Petition stands disposed of at the time of admission by giving liberty to the petitioner to file suitable application for amending the plaint for cancellation of the settlement deed, dated 13.06.2013. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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- 1.The II Additional District Munsif,
Tiruchirappalli. .
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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