



C.R.P. (MD) No.351 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 28.06.2023	Pronounced on: 31.07.2023
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CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).(MD).No.351 of 2023
and
C.M.P.(MD).Nos.1707 & 7239 of 2023

1.Dr.M.N.Kamalutheen

2.M.N.Abdul Rahim

3.M.N.Mohammed Ali

4.M.N.Bhaseer @ Salamath

.. Petitioners

Vs.

1.R.Saliha Beevi

2.Shaphyia Begum

3.Murshitha Begum

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 09.09.2022 passed in I.A.No.89 of 2020 in O.S.No.283 of 2019 on the file of the Additional District and Sessions Court, Palani, Dindigul District.

For Petitioner : Mr.S.Srinivasa Raghavan
For R1 : Mr.M.Suri



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C.R.P. (MD) No.351 of 2023

For R3 : No appearance

ORDER

This Civil Revision Petition has been filed to call for the records relating to the impugned fair and decreetal order dated 09.09.2022 passed by the learned Additional District and Sessions Judge, Palani in I.A.No.89 of 2020 in O.S.No.283 of 2019 and to set aside the same.

2.By the impugned fair and decreetal order dated 09.09.2022, the learned Additional District and Sessions Judge, Palani has dismissed I.A.No.89 of 2020 in O.S.No.283 of 2019 filed by the petitioner. I.A.No. 89 of 2020 in O.S.No.283 of 2019 was filed by the petitioner to reject the plaint under Order VII Rule 11 of CPC. Relevant portion of the impugned fair and decreetal order dated 09.09.2022 passed in I.A.No.89 of 2020 in O.S.No.283 of 2019 reads as under:

“12. In the case in hand, the recitals of the plaint itself discloses that the demand made for her share by the plaintiff has been denied by the defendants on the 40th remembrance day of their eldest brother. From that day the suit has been filed within three years. At the same, as argued by the petitioners / defendants 1 to 4 side that, the plaintiff was having knowledge about the execution of gift deeds and partition deeds then and there, it has to be decided only in the



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C.R.P. (MD) No.351 of 2023

suit trial, since, the petitioners have not produced any records to prove that, the plaintiff was having knowledge then and there about the execution of gift and partition deeds.

13.Further, in the plaint the plaintiff has questioned about the validity of the gift deeds. According to her, the gift deeds were executed under pressure and undue influence. She further added that, the recitals of the gift deeds itself disclosed that they have been executed on demand of the donees and no voluntariness therein. On perusal of the gift deeds dated 18.01.1966 and 09.12.1981 they revealed that the gift deeds have been executed on demand of the donees. Therefore, the genuineness of the gift deeds will be decided only in the suit trial. In a case law produced by the petitioner side, which reported in 2008 (1) CTC 527 of Hon'ble High Court Madras – M. Gurusamy (Died) and another Vs. G. Vijaya and others, it is held that,

“though the Court has ample powers to reject the Suit at any stage, if it finds materials under Rule 11, when disputes between the parties can be resolved only after trial, the plaint cannot be rejected.”

In this case also, with regard to the limitation and validity of the gift and partition deeds have to be decided only in the suit trial. Though the petitioners / defendants 1 to 4 produced several citation with regard to the Or.&, Rule 11 C.p.c, it is observed that the knowledge of the plaintiff has been established in those case laws, therefore, they are all irrelevant to the facts and circumstances of this petition enquiry.

Therefore, considering the foregoing



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C.R.P. (MD) No.351 of 2023

reasons it is decided that, there is no any merits in this petition and deserved for dismissal. Hence this petition is dismissed with costs.”

3.The petitioners are the defendants 1 to 3 in O.S.No.283 of 2019 before the Additional District and Sessions Court, Palani. The suit was filed by the 1st respondent against the petitioners, wherein, the 2nd and 3rd respondents herein were the other defendants.

4.The suit was filed by the 1st respondent to partition the suit schedule properties and to declare the registered gift deeds executed by the petitioners' father in favour of the petitioners and to declare the partition deed executed by the petitioners as null and void. The averments in the plaint admit that the suit schedule properties were gifted by the petitioners' father to the petitioners.

5.However, in the plaint, the 1st respondent has stated that the Gift Deed were secured by the petitioners in the years 1966, 1974 and 1981 under undue influence and coercion. Paragraph 13 in the plaint reads as under:-



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C.R.P. (MD) No.351 of 2023

13. The cause of action arose on 18.1.66, 11.1.1974, 9.12.81 and on 26.12.86 when the 4 gift deeds were executed by Abban Rowther, the father of the plaintiffs and the defendants 1 to 4 and 6; and on 12.6.76 when the mother of plaintiff was died; and on 21.3.88 when the said Abban Rowther died; and on various occasions the plaintiffs had demanded partition of said Abban Rowther's properties to her brothers who also conceded for the same; and on 3.6.91 and on 16.10.92 when registered partition deeds were executed between brothers; and on 16.3.2018 when the eldest brother of the plaintiff, Jamal Mohammed was died; and on 19.04.2018 when the 40th day function of said Jamal Mohammed's death and on that day partition was denied by their brothers; and on 4.4.19 when the lawyer notice was sent to defendants and they received the same and negotiated with respect to quantum of shares and the negotiation was failed a reply notice dated 21.10.19 was sent by defendants 1-4 belatedly after months and thereby again denied partition; and the suit properties are situated at Kodaikannal, Dindigul District which is within the jurisdiction of this Hon'ble Court.

6. The learned counsel for the petitioners would submit that the Trial Court erred in rejecting the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 by the petitioners for rejecting the plaint though the suit was hopelessly barred. It is submitted that the Courts are frowned upon the practice of clever drafting to contrive the jurisdiction.



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7.It is submitted that the impugned order dismissing the application filed by the petitioners for rejecting the plaint filed by the 1st respondent, under Order 7 Rule 11 of the Code of Civil Procedure, 1908, is therefore liable to be interfered with. The learned counsel for the petitioners drawn attention to the following decisions of the Hon'ble Supreme Court as well as of the Madras High Court (Principal Seat of this Court), Chennai, to buttress the point that mere clever drafting would not entitle the suit to be filed and in case such suits are filed, application filed for rejecting the plaint, ought to be allowed.

- i. **K.Murali Vs. M.Mohamed Shaffir**, 2020 (1) CTC 38.
- ii. **Chenniappan Vs. Valliammal and others**, rendered by the Madras High Court (Principal Seat of this Court), Chennai, on 19.09.2019, in S.A.No.54 of 2014.
- iii. **K.Akbar Ali Vs. K.Umar Khan and others**, LL 2021 SC 114.
- iv. **Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) thr. Lrs and others**, rendered by the Hon'ble Supreme Court on 09.07.2020 in Civil Appeal No.9519 of 2019.
- v. **N.Ravindran Vs. V.Ramachandran**, rendered by the Madras High Court (Principal Seat of this Court), Chennai, on 14.03.2011, in O.S.A.No.379 of 2008.
- vi. **Ramisetty Venkatanna and Another Vs. Nasyam Jamal Saheb and others**, rendered by the Hon'ble Supreme Court, on 28.04.2023, in Civil Appeal No. 2717 of 2023.



vii. **Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Lrs.**, rendered by the Hon'ble Supreme Court, on 13.03.2019, in Civil Appeal No. 2960 of 2019.

8. Per contra, the learned counsel for the 1st respondent would submit that the limitation is always mixed question of law and fact and therefore, the question of short-circuiting the suit initiated property under Order 7 Rule 11 of the Code of Civil Procedure, 1908 cannot be countenanced and therefore pray for dismissal of the present Civil Revision Petition.

9. The learned counsel for the 1st respondent has placed reliance on the decision of the Hon'ble Full Bench of the Supreme Court in **Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others**, 2018 (4) CTC 206.

10. The learned counsel for the 1st respondent would further submit that the suit has been filed for partition and declaration. The partial rejection of the plaint cannot be countenanced in the light of the decision of the Hon'ble Supreme Court in **Sejal Glass Ltd. Vs. Navilan Merchants Pvt. Ltd.**, 2018 (2) CTC 940.



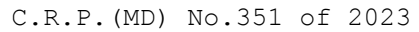
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11. That apart, it is submitted that the petitioners have also filed their Written Statement after dismissal of I.A.No.89 of 2020 and therefore the petitioners have accepted the proceedings and therefore, on this count also, the present Civil Revision Petition is liable to be dismissed.

12. By way of rejoinder, the learned counsel for the petitioners would submit that in view of the dismissal of I.A.No.89 of 2020 in O.S.No.283 of 2019 on 09.09.2022, the petitioners were forced to file their Written Statement, otherwise, they would have been set *exparte*.

13. I have perused the impugned order dated 09.09.2022 passed by the learned Additional District and Sessions Judge, Palani in I.A.No.89 of 2020 in O.S.No.283 of 2019.

14. The impugned order does not call for any interference. The application to reject the plaint has been rightly rejected by the learned Additional District and Sessions Judge, Palani, as limitation is a mixed question of fact and law. It cannot be used as a legal artillery to decimate a suit, which has been otherwise properly instituted before a Court. The



15. Dealing with almost an identical situation, the Hon'ble Supreme Court in **Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Kar and others**, 2018 (4) CTC 206, affirmed the view of the Trial Court following the decision in **Saleem Bhai and others Vs. State of Maharashtra and others**, 2003 (1) SCC 557; **Mayar (H.K.) Ltd., and others Vs. Owners & Parties, Vessel M.V. Fortune Express and others**, 2003 (3) SCC 100 and also **T. Arivandandam Vs. T.V. Satyapal and others**, 1977 (4) SCC 467. The Court reiterated the views in **Church of Jesus Christ of Latter-day Saints Charitable Trust and Educational Charitable Society Vs. Amman Educational Trust**, 2012 (4) CTC 308 (SC), that what needs to be looked into in deciding an application under Clauses (a) & (d) of Order VII, CPC are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments.



C.R.P. (MD) No.351 of 2023

16.I therefore do not find any reason to interfere with the order passed by the learned Additional District and Sessions Judge, Palani.

Under these circumstances, the present Civil Revision Petition is liable to be dismissed and is accordingly dismissed.

17.Considering the fact that the petitioner has also filed written statement after the dismissal of I.A.No.89 of 2020 in O.S.No.283 of 2019 vide impugned order dated 09.09.2022, there shall be a direction to the learned Additional District and Sessions Judge, Palani to expedite the Trial and dispose of the suit as expeditiously as possible preferably within a period of twelve (12) months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed.
No costs.

31.07.2023

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No



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C.R.P. (MD) No.351 of 2023

C.SARAVANAN, J.

Jen / krk

To

The Additional District and Sessions Judge,
Additional District and Sessions Court,
Palani, Dindigul District.

C.R.P.(MD) No.351 of 2023

31.07.2023