



C.R.P.(PD).No.872 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.872 of 2021
and CMP.No.7173 of 2021

1.Anusuya (L.R.R2)
2.M.Hemahitha (L.R.R2)

... Petitioners

vs.

1.Sarojini (died)
2.Amirtham (died)
3.K.Nalini
4.Sujini Elango
5.Ghokila
6.Indra Sekar
7.R.Lalitha
8.R.Kala

(Respondent-2 died. Respondents 3 and 4 and as petitioners 1 and 2 (who are already on record) are Lrs of the deceased R-2 viz., Amirtham as per the memo dated 23.08.2023 and vide Court order dated 06.02.2024 made in CRP.No.872 of 2021 and CMP.No.7173 of 2021)

(Respondent – 1 died. Respondents 5 to 8 are brought on record as Lrs of the deceased R-1 viz., Sarojini vide Court Order dated 06.02.2024 made in CMP.Nos.20090, 20093 and 20099 of 2023 in CRP.No.872 of 2021)

... Respondents



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Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order dated 04.02.2020 passed in I.A.No.2 of 2019 in O.S.No.517 of 2014 on the file of the IV Additional District and Sessions Court, Coimbatore.

For Petitioners : Mr.S.Mukunth
Senior Advocate
for M/s.Sarvabhauman Associates

For Respondents : Mr.C.R.Prasanan
for R5 to R8
R1 and R2-died
No appearance for R3 and R4

ORDER

The Civil Revision Petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioners seeking to reject the plaint.

2. The first respondent herein filed a suit for partition of half share in the suit properties against the petitioners and other respondents. The first respondent is petitioner's paternal grand father's sister. The petitioners



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who were arrayed as defendants 4 and 5 in the suit filed the instant application seeking rejection of plaint on the ground of limitation. In the affidavit filed in support of the petition, it was stated by the petitioners that various alienations had taken place long ago and partition was also effected among the legal heirs of Duraisamy brother of the first respondent in the year 2008. Therefore, the claim of the petitioners is that in view of various alienations and partition among the family members, the present suit filed by the first respondent is barred by limitation.

3. It is settled law that cause of action for relief of partition is continuous one. The petitioners claim various partition deeds, settlement deeds have been executed concerning suit properties and the suit properties had been dealt with as exclusive property of petitioners. The said plea raises the plea of limitation and ouster. Whether the first respondent/plaintiff is ousted from the suit property is the matter for trial and the same cannot be the ground for rejection of the plaint. Therefore, the trial Court rightly dismissed the petition for rejection of the plaint on the ground that the question of limitation raised is mixed question of fact and law.



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4. I do not find any error in the order passed by the trial Court.

Accordingly, the Civil Revision Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

27.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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The IV Additional District and Sessions Court,
Coimbatore.



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S.SOUNTHAR, J.

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