



C.R.P.No.2355 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2355 of 2024
and C.M.P.No.12345 of 2024

1.P.Perumal
2.Sakkarai

... Petitioner

-Vs-

1.P.Madhu
2.M.Nethravathi

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the District Munsif Court, Dharmapuri District dated 30.11.2023 made in I.A.No.1056 of 2023 in O.S.No.03 of 2021.

For Petitioners : Mr.P.M.Jayachandran

ORDER

The first petitioner herein is the plaintiff in O.S.No.3 of 2021. He filed the suit seeking for permanent injunction restraining his son / first respondent herein from interfering with his peaceful possession and enjoyment of the property.

2. It is the case of the plaintiff that he was benefitted with the property by way of a Natham patta issued by the Government on 28.11.1990. Thereafter, he had executed a gift deed in favour of his son, the first defendant. Alleging that the



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gift deed had been executed by undue influence and coercion, he presented a petition under Section 23 of the Maintenance of Parents and Senior Citizens Welfare Act, 2007 before the Revenue Divisional Officer, Dharmapuri. The said proceedings ended against him on 27.01.2022.

3. Thereafter, he moved an application for amendment of the plaint challenging the settlement deed. The said application was dismissed on 30.11.2023. Since the amendment application came to be dismissed, he filed another application seeking to withdraw the suit and file a fresh suit on the same cause of action challenging the settlement deed. The said application also came to be dismissed, against which the present revision has been filed.

4. A perusal of the affidavit at Page 27 shows that nowhere has the plaintiff / civil revision petitioner pleaded that the suit in O.S.No.3 of 2021 is affected by formal defect. The existence of formal defect is a condition precedent for withdrawal of a suit under Order XXIII Rule 1 of C.P.C. Therefore, in the absence of a formal defect in the plaint, I am not inclined to interfere with the order of the learned trial Judge dated 30.11.2023.

5. Granting liberty to the petitioner to challenge the dismissal of the amendment application by way of a revision, this Civil Revision Petition is dismissed. Needless to point out that the limitation being a mixed question of law and fact,



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it has to be gone into only at the time of trial. The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

The District Munsif
Dharmapuri.



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V. LAKSHMINARAYANAN, J.

KST

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