



C.R.P.(PD)No.2272 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.12.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.2272 of 2024
and C.M.P.No.11985 of 2024

1.S.Deivasigamani
2.Mohanapriya
3.Suruthipriya

.. Petitioners

Vs

S.Palanivel (deceased)
Nagarajan (deceased)

1.S.Jayaraman
2.Senthamilselvi
3.N.Vasantha
4.V.Devi Shanmugapriya

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 02.04.2024 made in I.A.No.1(A) of 2019 in O.S.No.1013 of 2014 on the file of the III Additional District Munsif Court, Salem.



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For Petitioners : Mr.V.V.Sathya

For RR 1 & 2 : Mr.J.Bharathiraja

ORDER

The civil revision petition arises against the order of the learned III Additional District Munsif at Salem in I.A.No.1A/2019 in O.S.No.1013 of 2014 dated 02.04.2024.

2. The civil revision petitioners are the defendants 1 to 3 in the suit. The respondents 1 & 2 presented O.S.No.1013 of 2014 for the following reliefs:

“(a) declaring the registered deeds dated 28.08.1996 and 27.06.2003 in the name of “WILL” and settlement in the name of defendants relating to the plaintiff's share, title and interest in the suit properties is void, unenforceable and no binding on the plaintiffs;

(b) restraining the defendants and their men from doing any detrimental acts against the plaintiffs' interest, share, claim and possession in the suit properties. ”



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3. The case of the plaintiffs is that the 1st plaintiff S.Palanivel, is a mentally challenged person. His siblings are the plaintiff nos.2 to 4 and, the 1st defendant. The defendants 2 & 3 are the daughters of the 1st defendant. There is no dispute that the property originally belonged to one Subramania Gounder. Subramania Gounder had married Pavayammal. From the wedlock, the plaintiffs and the 1st defendant were born. By virtue of a partition deed entered into between the parties on 15.09.1986, the suit schedule mentioned property fell to the share of Subramania Gounder and the mentally challenged 1st plaintiff. They had been in possession and enjoyment of the property till the death of Subramania Gounder.

4. Subramania Gounder had executed a “WILL” on 28.06.1996 and a settlement deed on 27.06.2003 with respect to the share of the 1st plaintiff, in favour of defendants 1 to 3. Subramania Gounder passed away on 26.05.2005. Subsequently, a guardian petition was filed in G.W.O.P.No.28 of 2010 on the file of the I Additional District Court at Salem. By way of order dated 27.11.2013, the 2nd plaintiff was appointed as a guardian for the 1st plaintiff. Hence, the plaintiffs presented



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O.S.No.1013 of 2014 for the aforesaid reliefs.

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5. On being served with the summons, the defendants filed a detailed written statement. According to them, the deceased Subramania Gounder had executed the aforesaid documents on account of the fact that defendants 1 to 3 were taking care of the mentally challenged 1st plaintiff. Subsequently, defendants 1 to 3 took out an application in 1A of 2019 for rejection of plaint. The basis on which the application is that the suit should have been filed within three years from the date of knowledge of the document. Since the suit was presented after the period of eleven years, it is liable to be rejected in *limine*. It is averred in the affidavit for rejection of plaint that the 2nd plaintiff had attested the settlement deed that had been executed by Subramania Gounder in favour of defendants 1 to 3. Hence, knowledge was attributed to the 2nd plaintiff.

6. A counter was filed by respondents 1 & 2/plaintiffs resisting the said application. It was pointed out that the mentally challenged person could not have presented the suit. Therefore, it is only after 27.11.2013, when the 2nd plaintiff was appointed as his guardian, he could present the suit. Therefore, he sought for dismissal of the petition.



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7. The learned III Additional District Munsif at Salem, after hearing both sides, dismissed the application. Hence, this revision is at the instance of defendants 1 to 3.

8. I heard Mr.V.V.Sathya for the civil revision petitioners and Mr.J.Bharathiraja for respondents 1 & 2.

9. Mr.V.V.Sathya points out that the deceased 1st plaintiff/mentally challenged person, was taken care of by defendants 1 to 3. It was only on that score that Subramania Gounder made a provision for the property to devolve on them. He argues that the 2nd plaintiff Nagarajan was an attesting witness to the document and therefore, he could not have presented the suit after a period of eleven years.

10. Per contra, Mr.J.Bharathiraja argues that G.W.O.P.No.28 of 2010 was contested by the defendants and it was thereafter that the learned I Additional District Judge allowed the application on 27.11.2013. The suit came to be filed immediately thereafter on 17.12.2014 and therefore, it is not barred by time.



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12. For the purpose of rejection of plaint, I have to go only as per the averments made in the plaint and the documents filed therewith. There is no dispute that the 1st plaintiff Mr.S.Palanivel was a mentally challenged person. A mentally challenged person cannot file a suit as he suffers from legal disability. In terms of Section 6 of the Limitation Act, limitation will commence as against a mentally challenged person only when the said disability is removed. It is not in dispute that till the 1st plaintiff passed on, the legal disability that he suffered from was not removed.

13.The only way in which a mentally challenged person could have presented the suit is through his guardian. The guardianship itself came to be ordered only in the year 2013. Therefore, limitation, in so far as the mentally challenged person, commences from the date when he was properly represented. Since the order had been passed on 27.11.2023, the guardian had time to file the suit till 26.11.2016. He filed



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the suit on 17.12.2014 well within the period of three years.

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14. The plea of Mr.V.V.Sathya that the defendants took care of the deceased 1st plaintiff as long as he was alive is a matter which requires evidence. The plaint proceeds that the deceased 1st plaintiff was turned out of the house by defendants 1 to 3. Taking the averments to be true, I cannot accede to the plea of Mr.V.V.Sathya as it requires evidence on record. Suffice it to say, for the purpose of disposal of this revision, *prima facie* I am of the view that the suit is not barred by time. Therefore, I have no other option than to confirm the order of the learned III Additional District Munsif at Salem.

15. With the above observations, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To



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III Additional District Munsif Court, Salem.

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V. LAKSHMINARAYANAN,J.

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