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C.R.P.(PD).No.2592 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.2592 of 2024
and C.M.P.No.13610 of 2024

Y.V.B.Jeevan (Died)

1.Revathi @ Renuka
2.Karthi
3.Ganesh

... Petitioners

VS

1.V.Bhuvaneshwari
2.V.Nithya

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 12.01.2024 in I.A.No.4 of 2023 in O.S.No.165 of 2019 on the file of the District Munsif cum Judicial Magistrate, Edappadi.

For Petitioners : M/s.Tamilselvi Santhanaraman

ORDER

This Civil Revision Petition arises against the order of the learned District Munsif cum Judicial Magistrate, Edappadi in I.A.No.4 of 2023 in O.S.No.165 of 2019, dated 12.01.2024.

2. O.S.No.165 of 2019 is a suit for partition of 2/6th share in the suit



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schedule property, and to declare that the sale deeds executed in favour of the 6th defendant on 01.02.2010 and 02.02.2012 as null and void, and the sale deed executed in favour of the 7th defendant on 23.08.2013 as null and void, and all the three documents are not binding on the plaintiffs.

3. The claim of the plaintiffs is that the property originally belonged to one Rangasamy Chettiyar and on his death, the property devolved on their grandfather-Natesan, who was allotted the suit schedule property amongst other properties to an extent of 3.22 acres. Natesan had alienated substantial portions of the property in favour of third parties on behalf of the defendants 1 and 2 and on behalf of the minor plaintiffs. The cause of action for the present suit arose when out of 3.22 acres, 21 cents were registered in favour of the 6th defendant on 02.02.2012 and 01.02.2010.

4. Summons were served on the defendants and the purchaser has filed a detailed written statement. Pending the suit, he took out an application for rejection of plaint in I.A.No.4 of 2023.

5. The plea for rejection of plaint is that the suit is barred by virtue of



Article 60 (a) of the Limitation Act, 1963 and that the suit has not been properly valued.

6. The learned District Munsif cum Judicial Magistrate, returned a finding that the suit for partition does not appear to be barred by limitation on perusal of the plaint and in so far as the court fee is concerned, he has given a detailed explanation that escalation of price, pending the litigation would not deprive the plaintiffs to present the suit for declaration and for partition. Consequently, he dismissed the rejection of plaint petition. Against the said order, the legal heirs of the 7th defendant are on revision before me.

7. Heard M/s.Tamilselvi Santhanaraman, learned counsel appearing for the civil revision petitioners.

8. M/s.Tamilselvi Santhanaraman, would invite my attention to Article 60 (a) of the Limitation Act, 1963 in order to forcibly argue that the period of limitation for filing a suit to set aside the transfer made by the father is 3 years from the date on which the ward attains majority. She would plead that since



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the suit is barred by limitation, the principles laid down in the case of

C.S.Ramasamy vs. Nanjammal and others, (2022) SCC Online SC 1330

would apply to the facts of this case. She would further point out that as the guideline value of the suit property is Rs.15,00,000/- and the market value is around Rs.90,00,000/-, the learned District Munsif cum Judicial Magistrate, Edappadi does not have jurisdiction.

9. I have carefully considered the submissions and gone through the records.

10. In order for Article 60 of the Limitation Act, 1963 to apply the guardian should have alienated the property of the minor. It is not the case of the plaintiffs that the 1st defendant's father acted as a guardian and had alienated their share of the property. It is their simple case that the 1st defendant had alienated the property, which is ancestral in nature in favour of the purchasers namely the 6th and 7th defendants. In other words, for Article 60 of the Limitation Act, 1963 to apply, the property must belong to the minors and the guardian of the property of the minor should have alienated the



property. This principle cannot be extended to alienation of a joint family property belonging to all the coparceners by birth. A coparcener can ignore a sale deed which is executed by an other coparcener whether it is for the entire extent or for an extent larger than what the alienor coparcener is entitled to. Paragraph No.15 of the plaint specifically refers to the plaintiffs ignoring the sale deeds made by the 1st defendant of the joint family property in favour of the defendants 6 and 7. Hence, I am not in a position to extend Article 60 to a case of joint family property.

11. In so far as the judgment that has been referred to by M/s.Tamilselvi Santhanaraman, the Supreme Court specifically held that from the reading of the plaint it came to a conclusion that the suit is barred by time. A reading of the plaint in this case would point out that the joint family property had been alienated by one coparcener in entirety in favour of a third party. No coparcener is entitled to alienate more than his/her share. In fact the purchaser from a coparcener is also not entitled to be in joint possession of the property and his remedy is only to file a suit for partition. In this case, instead of the purchasers filling a suit for partition, a coparcener has approached the



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court for the said relief.

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12. Furthermore, for rejection of plaint on the grounds of being barred by limitation, a reading of the plaint itself must disclose that the suit is barred. A reading of entirety of the plaint from Paragraph Nos.4 to 15 would show that it is a joint family property which had been alienated in its entirety by a coparcener. To reiterate alienation by one coparcener of the entire extent which belongs to the joint family will not bind the other coparceners.

13. In so far as the issue of court fee is concerned, the plaintiffs are not parties to the document. Therefore, Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1965 would not apply. Nevertheless, by way of abundant caution, they have sought for a declaration that the sale deeds are not binding on them in terms of Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965. Only if a person is the party to the document should he value it, on the basis of the value given in the sale deed or decree. That not being the situation in the present case, the plaint has rightly been valued under Section 25(d) of the said Act. In any event, a plaint cannot be



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rejected for under valuation in terms of Order 7 Rule 11(b) of CPC. Unless and until, the Court comes to a conclusion the plaint has been under valued and despite an opportunity being granted to the plaintiff to pay additional court fee, he fails to do so a plaint cannot be rejected. Both the points failing, I am not in a position to revise the order passed by the learned Trial Judge.

14. Accordingly, the Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

19.07.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The District Munsif cum Judicial Magistrate,
Edappadi.



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V.LAKSHMINARAYANAN, J.

dm

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