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C.R.P. (PD) No.4230 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.4230 of 2024
and C.M.P.No.23484 of 2024

1.Vasantharani
2.P.G.Siddhartth
3.P.G.Amarnath
4.Bhuvaniesvari

.. Petitioners

Versus

1.Naveen Kishore
2.K.Subramanian Naidu
3.M/s Axis Bank Limited
Represented by its Branch Manager
Kancheepuram Branch
No.60A, Gandhi Road
Kancheepuram – 631 501.

4.M/s UCO Bank Limited
Represented by its Branch Manager
Veliyur Village and Post.

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the I Additional District and Sessions Judge, Tiruvallur in I.A.No.4 of 2022 in O.S.No.363 of 2018 dated 31.10.2023.



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For the Petitioners : Mr.Rahul Jagannathan

ORDER

This Civil Revision Petition arises against the order of the 1st Additional District and Sessions Judge, Tiruvallur in I.A.No.4 of 2022 in O.S.No.363 of 2018 dated 31.10.2023.

2. The Civil Revision Petitioners are the defendants 2 to 5 in O.S.No.363 of 2018. O.S.No.363 of 2018 has been presented for partition and separate possession. The plea of the plaintiff is that the suit schedule mentioned properties are ancestral in nature. The 1st defendant is the father of the plaintiff. He along with his grand mother one Kamalammal had partitioned the properties along with two junior paternal uncles, one Rama Naidu. In the said partition deed, the 1st defendant was allotted certain properties. The plaintiff plead that matrimonial disputes arose between his mother and his father - the 1st defendant, which resulted in a divorce. On account of the divorce, he was under the care and custody of his mother. Mother and son (plaintiff) had



moved away from the resident of the 1st defendant.

3. In the year, 2017, he came to know that the ancestral properties had been dealt with by the 1st defendant to his detriment and hence, he presented the suit for the aforesaid relief. The defendants have filed the written statement and are contesting the same.

4. Nearly four years after the presentation of the plaint, in and around the year 2022, an application was taken for rejection of plaint. The plea in the rejection of plaint were as follows:-

(i) that the suit for partition is barred by time;

(ii) that the plaintiff has not challenged the partition deed entered by the 1st defendant, his mother, and his junior paternal uncles on 04.03.1993 and 22.03.1993;

(iii) that the suit should have been valued under section 37 (i) of the Tamil Nadu Suits and Court Fees Valuation Act and not under Section 37 (ii).



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5. The learned 1st Additional District Judge received this application in I.A.No.4 of 2022. He received a counter from the plaintiff and she proceeded to dismiss the application. Hence the revision.

6. Heard, Mr.Rahul Jagannathan for the Civil Revision Petitioners.

7. The first and foremost contention of Mr.Rahul Jagannathan is that the partition deeds dated 04.03.1993 and 22.03.1993 were not challenged in the suit. He further argues that as the suit had not been filed within 3 years of attaining majority by the plaintiff, it is barred by time.

8. In so far as the 1st plea on limitation is concerned, I am afraid I am not with Mr.Rahul Jagannathan. This is on account of the fact that Article 60 of the Limitation Act, which prescribes a period of 3 years for a minor to file a suit, to set aside the same applies when the property is that of the minor. The principle under Article under 60 cannot be extended to a situation, where a minor who has the share in the property, has not been included in the partition deed, even as an *eo nomine* party.



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9. It is too well settled yet I have to reiterate, where a minor who gets a share by virtue of his birth in a coparcenary, is entitled to ignore the documents that have brought into being excluding his interest. A minor need not sue for setting aside the same. He is entitled to seek for partition ignoring the said document.

10. In so far as the 2nd plea of ouster is concerned, a co-parcener loses his right in the co-parcenary property 12 years from the date he is ousted from the joint family. The plea of ouster requires evidence. If an aspect requires evidence, then it cannot be a subject matter of rejection of plaint.

11. In an application for rejection of plaint, the Court is concerned only with the averments made in the plaint and documents filed along with the plaint. At that stage, the Court need not bother regarding the defence that is taken by the defendants. Order VII Rule 11 of CPC is the plea in demurrer. The issue of looking into the defence that has been raised by the defendants does not arise at all. A reading of the plaint discloses the cause of action. This



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is because, the plaintiff claims that he is the offspring of the 1st defendant and the 1st defendant's family possessed of ancestral properties.

12. Unlike, Section 8 of the Hindu Succession Act, a party gets a right by virtue of the death of his predecessor in interest, in so far as Mitakshara joint family is concerned, a party gets his right by birth. If the averments made in the plaint are taken to be true, the plaintiff having born in 1988, will get a right by virtue of his birth. That cannot be divested by the unilateral acts of his father or the other co-parceners. In addition, the plaintiff pleads he is in joint possession of the property. That would suffice to bring the suit under Section 37 (2) of the Tamil Nadu Court-Fees And Suits Valuation Act. That being the position, I do not find any reason to interfere with the order of the 1st Additional District and Sessions Judge, Tiruvallur, which is in accordance with law.

13. In view of the above, this Civil Revision Petition stands dismissed.



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14. At this stage Mr.Rahul Jagannathan pleads that his client – 1st defendant, is aged about 66 years and being a senior citizen, he loves to see the end of the litigation during his lifetime. The proceedings having been initiated in the year 2018 and the suit is being 5 years old, the learned 1st Additional District and Sessions Judge, Tiruvallur, is required to give it all the expedition that it requires and dispose of the suit in O.S.No.363 of 2018, within a period of **nine months** from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

24.10.2024

Index : Yes / No
Internet:Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To
The I Additional District and Sessions Judge, Tiruvallur.



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V.LAKSHMINARAYANAN, J.,

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