



CRP. No.2884 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :07.06.2024

PRONOUNCED ON: 24.06.2024

CORAM

THE HONOURABLE **MR.JUSTICE BATTU DEVANAND**

C.R.P. No.2884 of 2019

and C.M.P.No.18764 of 2019

1.Ashwath Narayanan

2.Vasavi

... Petitioners / defendants

Vs.

1.Selvi

2.Seralathan

3.Jothi

4.Thilagavathi

5.Dr.Kayalvizhi

6.Veerapandiyana

7.Shaavaaraam

8.Nagaraj

9.Indhirani

10.Ananthalakshmi

11.Sarveswaran

12.M/s.Indian Oil Corporation Ltd.,

rep. by Divisional Manager,

Salem,

Division no.234, I Floor, NH7,

Bangalore Bypass Road,

Kondalampatti,

Salem.



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13.Sri Vijay Vikas School,
rep. by its Chairman Seralathan,
Acnhoor Village and Post,
Krishnagiri Taluk and District.

14.Sri Kamalalaya Education Health & Charitable Trust,
rep by Thilagavathi Seralathan,
Acnhoor Village and Post,
Krishnagiri Taluk and District.

15.Sri Annamalaiyar Teachers Training Institute,
rep. by Thilagavathi,
Acnhoor Village and Post,
Krishnagiri Taluk and District.

16.M/s.City Union Bank Ltd,
Krishnagiri Branch,
Cooperative Colony,
Krishnagiri Taluk and District.

17.D.K.78, Anchur Primary Agricultural
Cooperative Credit Society,
Acnhoor Village and Post,
Krishnagiri Taluk and District.

..respondents/plaintiffs

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the fair and decreetal order passed in IA No.1 of 2018 in O.S No.101 of 2017 dated 19.07.2019 on the file of the Principal District Judge, Krishnagiri.

For Petitioner	:	Mr.R.Singaraavelan, Sr.Counsel for M/s.V.L. Akshai Sajin Kumar
For Respondents	:	No appearance



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ORDER

This Civil Revision Petition is filed against the fair and decreetal order passed in I.A. No.1 of 2018 in O.S No.101 of 2017 dated 19.07.2019 on the file of the Principal District Judge, Krishnagiri.

2. Brief facts which are necessary to decide this petition are as follows:

2.1 The first respondent in this Civil Revision Petition, is the plaintiff. She filed a suit in O.S.No.101 of 2017 on the file of the Principal District Judge, Krishnagiri, seeking the relief of partition of her 1/3rd share in the suit properties and permanent injunction and also to declare the documents, viz., (A) to (R) mentioned in the plaint, as non-est, invalid, illegal and not binding on the plaintiff.

2.2 For the sake of convenience, the parties herein, would be referred to as per their nomenclature in the suit.

2.3 Pending disposal of the suit, the defendants 6 and 7 have moved an Interlocutory Application in I.A.No.1 of 2018 in the above suit under Order 7 Rule 11 CPC r/w 151 CPC, seeking to reject the plaint filed by the



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plaintiff.

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2.4 The defendants 6 and 7 are the subsequent purchasers of one of the suit properties, i.e. land to the extent of Ac.0.85 in S.No.187/2.

2.5 According to the defendants 6 and 7, the 1st defendant is the eldest son, plaintiff and 2nd defendant are the daughters of one Thiru Kamalanathan. The 3rd defendant is the wife of the 1st defendant. The suit properties are ancestral properties and the same were acquired by the said Kamalanathan by virtue of partition between himself and his brother A.M.Srinivasan on 24.12.1996 and on the very same day, both Kamalanathan and 1st defendant entered into registered partition deed dated 14.12.1996 in respect of the properties allotted to the said Kamalanathan. Thereafter, the 1st defendant has constructed two residential houses and executed a registered gift settlement deed dated 15.07.2009 in favour of his wife, Thilagavathi, who is none other than the 3rd defendant. The defendants 6 and 7 purchased the property to an extent of Ac.0.85 in S.No.187/2 by way of a registered sale deed dated 28.02.2014 and after purchase of the said land, they converted the land as house sites and sold 5 plots to defendants 8 to 12. The plaintiff's father died in the year 1997 and the mother of plaintiff and 1st defendant died in the year 2015 and the



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plaintiff got married on 26.06.1980 and the 2nd defendant got married on 31.08.1984 and subsequent to their marriage, partition was effected between the plaintiff's father and the first defendant who formed Hindu Joint family and before coming into force the amended Hindu Succession Act 39 of 2005. Therefore, according to the defendants 6 and 7, the plaintiff who is the daughter of Kamalanathan and sister of the 1st defendant is not entitled to claim share in the suit properties which were already partitioned by her father and brother as early as on 14.12.1996. However, the plaintiff filed the present suit in the year 2017. But the plaintiff has not challenged the partition deed within 3 years after demise of her father. Hence, for the reason stated that the plaintiff had married before the Amendment Act of 2005 and the partition took place on 14.12.1996, she cannot challenge after the period of limitation. With these averments, the defendants 6 and 7 sought for rejection of the plaint.

2.6 Resisting the above I.A., the plaintiff filed counter affidavit, wherein, while denying the averments made in the I.A., it is stated that the alleged partition deed entered into between the Kamalanathan and the first defendant dated 14.12.1996 and transfer of the property comprised in S.No.187/2 are unreal, sham and nominal and it also further stated that the



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suit is well within time and actuated by cause of action because the circumstances under which and nature upon which the deed between the 1st defendant and demised Kamalanathan came into existence was crystal clearly disclosed in the plaint and no real apportionment in the property was ever effected as recited in the document. When it was expressed by the 3rd defendant in disrespectful and humiliating revelations during the 16th day ceremony following the demise of the plaintiff's, 1st and 2nd defendant's mother on 15.3.2015, the transaction came to light at the instance of the 3rd defendant and hence the suit is well within the time u/s 56 of the Limitation Act. Hence, the plaintiff sought for dismissal of the I.A.

3. The trial Court, on consideration of submissions made by both parties as well as the documents filed by the parties, vide order, dated 19.07.2019, dismissed the I.A.

4. Questioning the above order, the defendants 6 and 7 have come forward with the present Revision.



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5. Mr.R.Singaravelan, learned Senior counsel appearing for the petitioners/defendants 6 and 7, at the out set, would submit that the Court below has not dealt with the matter in proper perspective as regards the limitation aspect as well as right of the plaintiff over the suit properties. He would contend that the plaintiff filed the suit for partition claiming 1/3rd share in the suit properties, in respect of which, already, the father of the plaintiff and 1st defendant, during his life time, had executed a partition deed on 14.12.1996 in favour of his son, the 1st defendant and the plaintiff is well aware of the same, but she has not chosen to challenge the same within a period of three years from the date of execution of the partition deed or after demise of her father. He would also contend that as per Hindu Succession Act, 1956, the plaintiff is not entitled to claim any property after her marriage since she got married in the year 1980 itself and the amended Act 39 of 2005 giving equal rights to the daughters on par with sons came into force only in the year 2005, while so, in the year 1996 itself, there was a partition in respect of suit properties between the father of the plaintiff and 1st defendant on 14.12.1996 and subsequently, the 1st defendant executed a registered settlement deed in favour of his wife, 3rd defendant and therefore, absolutely there was no coparcenary property available in order to make a



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claim of equal right by the plaintiff. The learned Senior counsel would point out that in order to wriggle out this, nearly after lapse of nearly 21 years, the plaintiff seeks declaration of the document, i.e. registered partition deed dated 14.12.1996 executed between the father of the plaintiff and the 1st defendant as non-est, sham and nominal and not binding upon the plaintiff, which cannot be entertained as virtually it is barred by limitation.

6. In support of his contentions, the learned Senior counsel also relied upon a decision of this Court in “*Kesavan versus Pushpavathy and others*” in CRP No.2251 of 2021, dated 01.09.2023 wherein also, under very similar circumstances, taking note of the fact that the plaintiff therein, having filed the suit after 26 years of the execution of the registered settlement deed, this Court held that the suit is not maintainable and it is nothing but an abuse of process of Court. With these contentions, the learned Senior counsel would urge this Court to set aside the order passed by the Court below.

7. There is no representation on behalf of the respondents and hence, this Court proceeds with the matter on its merits.



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8. Heard the learned Senior counsel for the petitioners/defendants 6

and 7 and perused the entire materials available on record.

9. It is not in dispute that the plaintiff is aware of the partition deed dated 24.12.1996 executed between her father Kamalanathan and her brother, 1st defendant. As could be seen from para 4 of the plaint which denotes 'cause of action', the plaintiff has mentioned that-

“... the cause of action for the suit between the plaintiff and defendants arose before this Hon'ble Court on 24.12.1996 when the plaintiff caused her father to execute a partition deed in favour of the 1st defendant for the sake of facilitating him to carry on civil contract work by keeping the property as solvency in order to remove the stigma fastened by the 3rd defendant on the 1st defendant and all occasions till the demise of the parents of the plaintiff when the 3rd defendant clandestinely kept a cordial relationship and when the 3rd defendant with the connivance of her father, fraudulently got executed settlement deed from 1st defendant in her favour over the suit properties and thereupon on when surreptitiously encumbered the properties in favour of her associates defendants 6 to 12 and 14 to 16 dubiously and on when the defendants 13 and 17



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transacted with the plaintiff and all occasions when the 3rd defendant does all sorts of acts which are detrimental to the joint family institution of the suit property....”

10. A bare perusal of the above, it is clear that the plaintiff is well aware of all the facts, viz., execution of partition deed by her father dated 14.12.1996 in favour of his son, 1st defendant and consequential execution of settlement deed by the 1st defendant in favour of his wife, 3rd defendant on 15.07.2009, who in turn, sold the land to an extent of Ac.0.85 in S.No.187/2 vide registered sale deed dated 28.02.2014 in favour of the defendants 6 and 7. Though the plaintiff narrated the circumstances under which her father was constrained to execute partition deed in favour of the 1st defendant, however, it is pertinent to note that despite well aware of the partition deed dated 24.12.1996 and after demise of her father Kamalanathan on 17.08.1997, the plaintiff has not challenged the said partition deed dated 24.12.1996 within a period of three years. Article 58 of the Schedule to the Limitation Act, 1963 prescribes the period of limitation of three years for a suit seeking declaratory relief and limitation started running when the right to sue first accrued. The period of limitation



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under this article is three years from the date when the right to sue first accrues. It is a residuary article governing all those suits for declaration which are not specifically governed by any other articles in the Limitation Act. Article 109 is the special Article to apply where the alienation of the father is challenged by the son and the property is ancestral and the parties are governed by Mitakshara law. Generally, where a statute contains both general provision as well as specific provision, the later must prevail. Therefore, Article 58 has no application to the instant case. Article 109 is as under:

Description of suit	Period of limitation	Time from which period begins to run
109.By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.	Twelve years	When the alienee takes possession of the property.

11. The word 'alienation' in this article includes 'gift. In order to attract Article 109, the following conditions have to be fulfilled, namely, (1) the parties must be Hindus governed by Mitakshara; (2) the suit is for setting aside the alienation by



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the father at the instance of the son; (3) the property relates to ancestral property; and (4) the alienee has taken over possession of the property alienated by the father. This article provides that the period of limitation is twelve years from the date the alienee takes possession of the property.

12. In the present case, admittedly, the plaintiff is well aware of the execution of the partition deed dated 24.12.1996 between her father and her brother, 1st defendant well in the year 1996 itself. However, the plaintiff has not challenged the said partition deed 24.12.1996 within the prescribed statutory period of three years. Therefore, having allowed the partition deed dated 24.12.1996 between the parties to remain in force all along, the plaintiff has virtually lost the right to claim that the suit properties are ancestral properties. Further, after execution of partition deed by the father of the plaintiff in favour of his son, the 1st defendant herein, he has also taken possession over the suit properties on the date of execution of partition deed itself.



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13. It is pertinent to note that the time limit to claim ancestral property by daughter is 12 years on par with sons. According to Article 65 of Schedule I in the Limitation Act, 1963, an aggrieved person may file a suit for recovery of possession of immovable property or any interest therein based on proprietary title within this period. Admittedly, the present suit has been filed by the plaintiff nearly after lapse of nearly 21 years.

14. The Hindu Succession Act, 1956 has granted equal right to the daughter, widow, mother and son. They are become Class I legal heirs of deceased male Hindu and they are become eligible to obtain property right from their ancestor. However, it had restricted right in respect of ancestral holding. It has provided right by birth to male alone. After the amendment of Section 6 of Hindu Succession Act 39/2005, which includes the female heir to inherent the coparcenary property by survivorship is only in respect of unobstructed heritage and not in respect of obstructed heritage.

15. In the present case, the suit properties, though claimed by the plaintiff as ancestral properties, as already stated supra, it cannot be construed as ancestral properties since the father of the plaintiff had already



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executed a partition deed in favour of his son, the 1st defendant on 24.12.1996. Therefore, the plaintiff, being female heir to inherent the coparcenary property should be only in respect of unobstructed heritage, but in the present case, there is no unobstructed heritage after execution of the partition deed by the father of the plaintiff. If at all the plaintiff is entitled to claim right only in respect of the property whatever was left after the partition deed executed by the father of the plaintiff and the plaintiff can maintain the suit for partition and claim right over coparcenary properties as per the amended Hindu Succession Act.

16. Therefore, in the light of the above discussion, the plaintiff is not entitled to maintain the suit in respect of the suit properties, which cannot be construed as ancestral properties and as such, the suit is not maintainable and the plaint is liable to be rejected.

17. In this regard, it is worthwhile to refer the decision of this Court in “*Kesavan versus Pushpavathy and others*” in CRP No.2251 of 2021, dated 01.09.2023 wherein under very similar circumstances, taking note of the fact that the plaintiff therein, having filed the suit after 26 years of the



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execution of the registered settlement deed, this Court held that the suit is not maintainable and it is nothing but an abuse of process of Court.

Relevant portion as found in para 13, is extracted as under:

“13. She questions the execution of the settlement deed for the ancestral properties and she claims that they are ancestral properties. The right of the Hindu Women to claim partition of the coparcenary property came into force as per amendment to the Hindu Succession Act in 2005. Long prior to the amendment to Hindu Succession Act, 2005 to that, the father of the Plaintiff had executed the settlement deed in favour of his son as per the prevailing customary practice. Therefore, the Respondent / Plaintiff having filed the suit, after 26 years of the execution of the registered settlement deed, is not maintainable. It is nothing but an abuse of the process of the Court as per the ruling of this Court reported in **2010(4) CTC 690 Southern and Rajamani Transport Private Limited, rep. by its Director, V.R.Venkataswamy, No.270, Goods Shed Road, Madurai - 625 001 and 33 others -vs- R.Srinivasan and others**, also in another reported ruling the learned Single Judge of this Court **2017 SCC Online Mad 4702: (2017) 8 Mad LJ 697 Rajendran and another -vs- Ettammal and others**. Therefore, in the light of the above two rulings, the facts and circumstances of this case attracts the circumstances stated in the above rulings.



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The Respondent as Plaintiff had filed the suit only to cause harassment to the Petitioner. It is nothing but abuse of the process of the Court and by clever pleadings the suit was filed for partition. The learned Judge before entertaining the suit, ought to have returned by questioning the maintainability of the partition suit based on the pleadings of the plaintiff. Since the learned Judge had not exercised the discretion, the vested in him or her it had resulted in abuse of the process of the Court forcing the second Defendant to approach this Court straight away under Article 227 of the Constitution of India, to strike out the plaint. In the light of the above, the points for consideration is answered in favour of the Petitioner.”

18. When the suit is not maintainable by virtue of prescription of time limit as per the provisions of Limitation Act, 1963 as well as right of the plaintiff under the provisions of the Hindu Succession Act, 2005, the learned Judge ought to have rejected the plaint without driving the parties to under go rigour of long lasting trial, which ultimately, would reach the finality of the dismissal of the suit as not maintainable.



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19. In the light of the above discussion, this Court is of the view that the plaint is liable to be rejected and the order passed by the trial Court is liable to be set aside.

20. Accordingly, the Civil Revision Petition is allowed.

i) The order passed in IA No.1 of 2018 in O.S No.101 of 2017 dated 19.07.2019 by the learned Principal District Judge, Krishnagiri is set aside and the plaint is hereby rejected.

ii) No costs.

iii) Consequently, connected Civil Miscellaneous Petition is closed.

24.06.2024

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Index : Yes / No

Internet : Yes / No

Issue by 27.06.2024

B/o.

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To

The Principal District Judge, Krishnagiri



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BATTU DEVANAND, J.
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Pre-delivery Order in
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