



C.R.P.No.3396 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 22..08..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.3396 of 2024

and

C.M.P.No.18345 of 2024

V.Subramani (Died)

1.S.Sasikumar

2.S.Pradeepkumar

..... Petitioners

-Versus-

T.Thangamani

..... Respondent

Petition filed under Article 227 of the Constitution of India, praying to allow the civil revision petition by setting aside the Fair and Decretal Order dated 24.08.2022 passed by the learned I Additional District Judge, Salem, in I.A.No.4 of 2020 in O.S.No.115 of 2020.

*For Petitioner(s) : Mr.R.Vivek for
Mr.S.Senthil*



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ORDER

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This civil revision petition arises against an order dated 24.08.2022 passed by the learned I Additional District Judge, Salem, in I.A.No.4 of 2020 in O.S.No.115 of 2010.

2. The suit in O.S.No.115 of 2010 had been presented by the respondent seeking for partition of her 3/16th share and for separate possession of the properties. The claim of the plaintiff is that the 1st defendant married her mother in the year 1970. She would state that she was born in 1973. Even during the existence of the marriage of the 1st defendant with her mother-Kannammal, the 1st defendant proceeded and married one Mahalakshmi through whom he begot the civil revision petitioners/defendants 2 & 3. She claims that the suit properties are ancestral properties of the 1st defendant. Since her demand for partition was not complied with, she presented the suit for the aforesaid relief.

3. On entering appearance, the 1st defendant filed a detailed written statement, which was adopted by the civil revision petitioners. Thereafter, the plaintiff amended the plaint, stating that the 1st defendant had obtained a release deed (ஜீவனாம்ச பாத்ய விடுதலைப்பத்திரம்) giving up right of maintenance from her mother-Kannammal. On amendment that had been carried out, the defendants have also filed their additional written statement. Subsequently, they



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took out an application in I.A.No.4 of 2020, seeking the court to frame the following issue as an additional issue:-

“Whether the release deed dated 08.02.1979 ought to have been set aside within three years of the plaintiff attaining the majority and the suit filed without setting it aside is hit by law of limitation and estoppel?

The learned I Additional District Judge received a counter from the plaintiff and dismissed the application. Hence, this civil revision petition.

4. Mr.R.Vivek, learned counsel appearing on behalf of Mr.S.Senthil, learned counsel on record for the petitioner.

5. Mr.R.Vivek would submit that the plaintiff having projected a maintenance release agreement, she ought to have sought for a declaration that the said deed is null and void and not binding on her. This is the additional issue that the civil revision petitioner wants to be framed. He would further submit that the dismissal of the application referring to Section 10 of the Limitation Act, 1963, is not proper.

6. An additional issue is framed for a matter raised in the plaint and denied in the written statement. The plaintiff has specifically pleaded that the document is the release of the right of maintenance of her mother-Kannammal.



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Whether it includes the right of a minor plaintiff is a matter which has to be gone into at the time of trial.

7. The specific plea of the plaintiff is that the properties are ancestral properties. If the properties are ancestral properties then, the plaintiff acquires a right in the suit properties by birth. Furthermore, after the judgement of the Supreme Court in **Vineeta Sharma v. Rakesh Sharma [(2020) 9 SCC 1]**, interpreting the amendment to Section 6 of the Hindu Succession Act, 1956, the plaintiff will be entitled to share in the properties by her birth. If that is the position of law, she need not seek for setting aside the document of release executed by her mother.

8. Further more, the plaintiff has pleaded that she was a minor aged about 6 years. A document extracted from a minor, even if she is a party to it, would not be of any benefit to the defendants. This is because a minor cannot enter into a contract under the Indian Contract Act, 1872. Furthermore, Article 60 of the Limitation Act, 1963, applies only for a property, which is owned by an minor, and not ancestral property. If the proposition projected by Mr.R.Vivek is to be accepted, then, every kartha will alienate the property when the child is a minor and thereafter, plead that the suit is hit by limitation. I am not willing to fall prey to such a horrendous proposition.



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In the result, the Civil Revision Petition fails and the same is dismissed

accordingly. No costs. Consequently, connected CMP is closed.

Index : yes / no

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Neutral Citation : yes / no

Speaking / Non Speaking Order

kmk

To

1.The I Additional District Judge, Salem, Salem District.



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V.LAKSHMINARAYANAN.J.,

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