



C.R.P. No. 3683 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

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THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 3683 of 2022

and

C.M.P. No. 19505 of 2022

1. P.S.Jayapal

2. R.J.Ramesh

... Petitioners / Respondents / Defendants

Vs.

1. Geetha

... Respondent / Petitioner / Plaintiff

2. Sakunthala

... Respondent / Respondent / 3rd Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the order dated 30.08.2022 passed in I.A. No. 1 of 2021 in O.S. No. 4 of 2017 on the file of the II Additional District Judge, Salem.

For Petitioners : Mr. D.Ashokkumar

For R1 : M/s. R.Marudhachalamurthy

For R2 : No appearance

ORDER

This Civil Revision Petition has been preferred as against the order dated 30.08.2022 passed in I.A. No. 1 of 2021 in O.S. No. 4 of 2017 on the file of the II Additional District Judge, Salem, wherein, the 1st respondent herein has filed petition before the Trial Court to amend the plaint to declare



the gift settlement deed dated 28.11.2013 in Document No. 4988 of 2013 before the No.1, Joint Sub Registrar, Salem as null and void and the same was allowed. Against which, the present Civil Revision Petition is filed.

2. The petitioners are the 1st and 2nd defendants in the main suit and the 1st respondent herein has filed the main suit against the petitioners and the 2nd respondent herein for the relief of partition and separate possession and for permanent injunction. The petitioners being the defendants have filed the written statement. After the filing of the written statement, at the time of commencement of trial, the 1st respondent herein has filed petition for amendment after 5 years from the date of filing of the suit. In the plaint itself, there are recitals that the said settlement deed dated 28.11.2013 was cancelled on 11.06.2014 and after the cancellation of settlement deed once again they filed petition praying to declare that the gift settlement dated 28.11.2013, as null and void. According to the petitioners, the claim of the 1st respondent is barred by limitation as per Article 58 of the First Schedule of the Limitation Act, 1963. In the plaint itself, the plaintiff admitted that the date of settlement deed dated 28.11.2013 came to the knowledge of the 1st respondent/plaintiff. But she has not sought for any relief at the time of filing suit and after 5 years from the date of filing suit, she filed an application for amendment. The above said aspect has not been considered by the Trial Court. Therefore, the order



passed by the Trial Court is liable to set aside.

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3. The case of the 1st respondent is that the petitioners are the father and brother of the 1st respondent and the 2nd respondent is her sister. The mother of the 1st respondent, during her life time, executed a Will bequeathing her property in her favour and her sister. Her mother had given property only for welfare of her life and her child. The petitioners played fraud and misrepresented by giving false words that they are helping her for getting loan for developing her tailor shop by mortgaging the property. Believing the false words of the petitioners, she signed in the papers. Thereafter, when she requested about the loan amount, petitioners are giving evasive reply. Then only she came to know that the petitioners obtained settlement deed by playing fraud and misrepresentation. Thereafter, she gave police complaint but they have not taken any action and advised to go to Civil Court. Thereafter, she cancelled the gift settlement deed which was obtained by playing fraud and misrepresentation. Therefore, now she filed petition before the Trial Court to amend the prayer to declare the settlement deed dated 28.11.2013 as null and void.

4. Before the Trial Court, no oral or documentary evidences adduced on either side. The Trial Court, after hearing both sides, allowed the petition.



Against which, the 1st and 2nd respondents in I.A. No. 1 of 2021 have preferred this Civil Revision Petition.

5. The learned counsel appearing for the petitioners would contend that the 1st respondent herein, at the time of filing the suit itself had knowledge about the settlement deed and she specifically pleaded that the settlement deed dated 28.11.2013 was cancelled on 11.06.2014 and thereafter, she filed the suit only for partition and separate possession and for permanent injunction. The suit was filed in the year of 2017 and after having knowledge about the settlement deed and after cancellation on 11.06.2014, she filed the suit in the year 2017 and she filed the present I.A. No. 1 of 2021 on 15.02.2021 to amend the prayer for declaration of the settlement deed. Therefore, the claim of the 1st respondent/plaintiff is barred by limitation and already the settlement deed was cancelled by the 1st respondent herself. The Trial Court, without considering the same, allowed the application. Therefore, the order passed by the Trial Court is unsustainable and the same is liable to be set aside.

6. The learned counsel appearing for the 1st respondent would contend that the petitioners, by playing fraud and misrepresentation obtained settlement deed dated 28.11.2013 and thereafter, she came to know about the alleged fraud played by the petitioners and thereby, she cancelled the



settlement deed on 11.06.2014 and thereafter, she gave a complaint before the police station and since the police advised to file a Civil Suit, she filed the main suit for the relief of partition and separate possession and mandatory injunction. However, she was advised to amend the prayer and thereby, she filed the petition before the Trial Court. The Trial Court, after considering all the aspects, rightly allowed the petition. Therefore, the present Civil Revision Petition is liable to be dismissed.

7. This Court heard both sides and perused the materials available on record.

8. In this case, the 1st respondent herein has filed suit against the petitioners and the 2nd respondent for the relief of partition and separate possession in the year 2017. Thereafter, the petitioners herein have filed written statement on 06.03.2017. The 1st respondent/plaintiff has not taken any steps to amend the prayer within the period of limitation i.e., 3 years from the date of knowledge. But the present petition was filed only on 15.02.2021. Even according to the pleadings, she herself executed a settlement deed on 28.11.2013 and thereafter, the same was cancelled on 11.06.2014. Therefore, the 1st respondent/plaintiff had knowledge about the settlement deed on the date of settlement itself and subsequently on 11.06.2014 she cancelled the



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settlement. But she has filed suit only for the relief of partition and separate possession and has not filed any suit for the relief of declaration in respect of the above said settlement deed. Moreover, the 1st respondent/plaintiff herself admitted that the said settlement deed was cancelled on 11.06.2014. Therefore, the prayer in respect of the cancellation of settlement deed would not arise. Even assuming that the settlement deed was obtained by playing fraud and it ought to have been set aside by the manner known to law within the period of limitation. As per Article 58 of the First Schedule of the Limitation Act, 1963, the period of limitation is 3 years, but the present petition is filed after 7 years from the date of knowledge and after 4 years from the date of filing suit. Therefore, the claim of the 1st respondent/plaintiff is barred by limitation. It is true that limitation is mixed with question of law and fact and the same can be decided after full trial. However, amendment in respect of the time barred claims can be rejected at the time of considering the applications for amendment itself.

9. Therefore, in the case on hand, from the pleadings, it is clear that the claim of the 1st respondent/plaintiff is barred by limitation and as per the plaint pleadings, the 1st respondent/plaintiff herself cancelled the settlement deed through cancellation deed dated on 11.06.2014. The above said facts have not been considered by the Trial Court and the Trial Court has erroneously allowed the application. Therefore, the order passed by the Trial



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Court is unsustainable and the same is liable to be set aside. In view of the aforesaid discussions, this Court is of the opinion that the order passed by the Trial Court is liable to be set aside by allowing this Civil Revision Petition.

10. In the result, this Civil Revision Petition is allowed and the order passed by the Trial Court in I.A. No. 1 of 2021 in O.S. No. 4 of 2017 dated 30.08.2022 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

23.07.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To
The II Additional District Judge, Salem.



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P.DHANABAL, J.,

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