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C.R.P.(PD).No.4222 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 22.10.2024

CORAM :

**THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(PD).No.4222 of 2024  
and C.M.P.No.23391 of 2024

1. Jothi Subramaniam
2. R.Periyasamy
3. Chidambaram

.. Petitioners

**Versus**

1. A.Subbayee
2. P.Lakshmi
3. C.Thulaisyammal
4. T.Rathinammal
5. Parimala Devi
6. T.Sivakumar
7. Ramathal

.. Respondents

**Prayer :** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order, dated 28.03.2024 in I.A.No.4 of 2023 in O.S.No.79 of 2023 on the file of the learned District Munsif, Perundurai at Erode district.

For Petitioners : Mr.R.Rahul  
for Mr.T.Senthil Kumar



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## **ORDER**

This Civil Revision Petition arises at the instance of the defendant Nos.4, 5 and 7 in O.S.No.79 of 2023 on the file of the learned District Munsif, Perundurai.

2. O.S.No.79 of 2023 was presented for several reliefs of declaration and partition. It is the case of the plaintiffs that there was one Sengoda Gounder, who was in possession of several properties, including ancestral properties. The plaintiff Nos.1 to 3 are the daughters of Sengoda Gounder, so is the first defendant. The case of the plaintiffs is that Sengoda Gounder was admitted to a Hospital at Erode. At that time, the first defendant obtained a settlement deed surreptitiously 28.08.1990. They pleaded that Sengoda Gounder passed away soon thereafter on 05.09.1990 and they have a share in the properties. They pleaded that they came to know about the alleged settlement deed executed by Sengoda Gounder in favour of the first defendant only on 14.07.2023.

3. On these pleas, they sought a declaration and to set aside the settlement deed that had been obtained by the first defendant from Sengoda



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Gounder and consequently, to set aside all the sale deeds by the first defendant in favour of the defendant Nos.4 to 7.

4. On service of the summons, the defendant Nos.4, 5 and 7 took out an application for rejection of plaint. Their plea was that the suit is barred by limitation and that the suit does not disclose a cause of action. After receipt of the counter-affidavit from the plaintiffs, the learned Trial Judge dismissed the application on 28.03.2024. Hence this Civil Revision Petition.

5. Heard Mr.R.Rahul, learned Counsel representing Mr.T.Senthil Kumar, learned Counsel for the petitioners.

6. Mr.R.Rahul contends that the settlement deed was executed on 31.08.1990 and the other sale deeds on 12.04.1999, 14.07.1999 and 21.12.1999. That is, atleast 24 years prior to presentation of the suit. He points out that the relief of declaration under Article 58 of the Constitution of India, has to be sought for when the "Right to Sue first accrues and since the document was executed in the previous millennia, presentation of the



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suit after lapse of nearly two decades, is not only barred by limitation, but, is also abuse of process of law.

7. I have carefully considered the submissions of Mr.R.Rahul.

8. When it comes to rejection of plaint, the Court always has to go only on the basis of the averments made in the plaint and the documents annexed thereto. It is the clear and categorical case of the plaintiffs that they came to know about the document of settlement said to have been executed by Sengoda Gounder in favour of Rathinammal only on 14.07.2023. It is only on that day, the cause of action commences. If that be the situation, the suit, which has been presented soon thereafter on 24.07.2023, cannot be said to be barred by time.

9. Insofar as the plea that there is no cause of action is concerned, a perusal of the plaint shows that the plaintiffs allege that the settlement deed, dated 31.08.1990 is one vitiated by circumstances pleaded in the plaint. In case, the settlement deed is vitiated by circumstances, then, the first defendant would not be entitled to the entire extent. It is on that basis, he



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has executed the subsequent sale deeds. There, being triable issues, this is not matter for rejection of plaint. I have no reason to take a different view from the one taken by the learned District Munsif, Perundurai. Despite the vehement pleas of Mr.R.Rahul, I am not in a position to come to his rescue.

10. This Civil Revision Petition is dismissed. No costs.  
Consequently, connected miscellaneous petition is closed.

22.10.2024

Index : yes/no  
Speaking order/Non-speaking order  
Neutral Citation : yes/no  
grs

To

The District Munsif,  
Perundurai.



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**V.LAKSHMINARAYANAN, J.**

grs

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