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C.R.P.(PD)No.4508 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4508 of 2024

and

C.M.P.No.25146 of 2024

V.Shankar

.. Petitioner

..Vs..

1. V.Vijaya

2. Padmavathy

3.Rohitha

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and Decretal order dated 12.02.2024 in I.A.No.5 of 2023 in O.S.No.39 of 2021 on the file of learned Subordinate Judge, Mettupalayam.

For Petitioner : Mr.P.A.Sai Govindaraja



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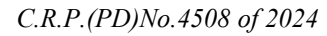


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ORDER

This civil revision petition challenges the order of the learned Subordinate Judge, Mettupalayam in I.A.No.5 of 2023 in O.S.No.39 of 2021 dated 12.02.2024.

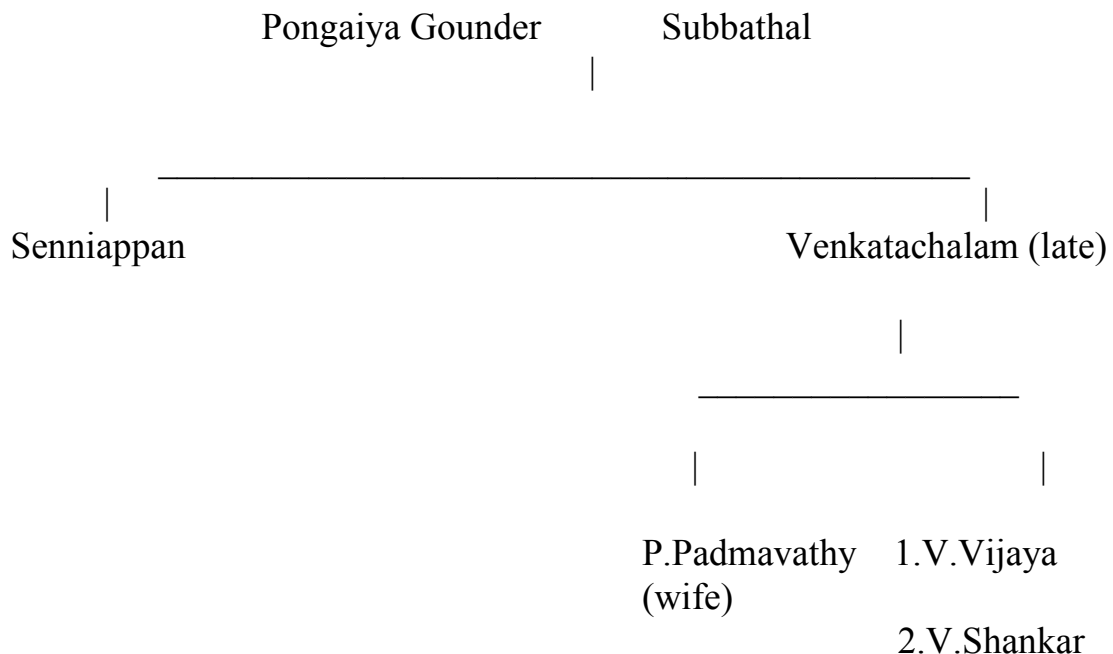
2. The Plaintiff, Vijaya is the daughter of one Venkatachalam. The contesting 2nd defendant viz., Mr.V.Shankar is her sibling. The case of Vijaya is that the property originally belonged to one Pongaiya Gounder (her paternal grandfather), by virtue of sale deed dated 24.09.1980. He passed away on 10.12.1994. On his death, his wife Subbathal and his sons Senniappan and Venkatachalam were entitled to 1/3 rd share each. As Venkatachalam, predeceased him, the Plaintiff and the defendants 1 and 2 are entitled to 1/3rd share in the common 1/9th share each. Subbathal and Senniappan had executed a release deed of their 2/3rd share in favour of the 1st Defendant on 11.12.2006, who, in turn, executed a settlement deed in favour of her son i.e., the 2nd defendant, on 23.06.2014. The Plaintiff specifically pleads that she is not a party to the settlement deed. She had sought for partition and the defendants did not come forward to amicably settle the matter. Hence,



Plaintiff.

by the plaintiff is set forth below:

GENEALOGY TREE



4. The 2nd Defendant filed a written statement denying all the averments. He pleaded that by virtue of settlement deed executed by the 1st defendant in his favour, he became absolute owner of the property. He also pointed out that the Plaintiff has no right, title, or interest in the



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property unless she seeks for cancellation of the settlement deed.

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5. The parties went for trial on the basis of these pleadings and the defendants 1 and 3 have remained *ex parte* before the Trial Court.

6. During the course of cross examination of P.W.1, 2nd defendant had contested stating that since P.W.1 has not sought for cancellation of the settlement deed, the suit is not maintainable.

7. Therefore, the Plaintiff has come forward with an application to amend the plaint to include the prayer for declaration that the settlement deed executed by the 1st defendant in favour of the 2nd defendant is null and void and it would not bind the plaintiff.

8. This application was received as I.A.No.5/2023. The civil revision petitioner filed a counter stating that the amendment is barred by time and that the plaintiff is not entitled to seek for the said prayer as he had filed the written statement as early as on 10.03.2023.

9. The learned Subordinate Judge, Mettupalayam allowed the said



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application. Hence, this revision by the second defendant.

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10. I heard Mr.Sai Govindaraja, learned counsel for the civil revision petitioner .

11. Mr.Sai Govindaraja reiterated the contentions that were placed before the Court below. He urged that the Plaintiff had knowledge of the settlement deed on the date of presentation of the Plaint. Hence, the Plaintiff ought to have filed a suit for declaration at that point of time and cannot seek the said relief by way of amendment.

12. I have considered the submission of Mr.P.A.Sai Govindaraja, for the petitioner.

13. The relationship amongst the parties is admitted. The Plaintiff is the elder sister of the revision petitioner. The 1st defendant is the plaintiff's mother and the 2nd Defendant is the plaintiff's younger brother. On the death of their grandfather, Pongaiya Gounder, the properties devolved on his wife, his surviving son Senniappan and the legal heirs of Venkatachalam. As Venkatachalam predeceased Pongaiya Gounder,



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Venkatachalam's wife, his son and his daughter got 1/3rd share in common. While so, Subbathal and Senniappan executed a release deed dated 11.12.2006 in favour of the first defendant. Therefore, the share of the 1st Defendant enlarged from her 1/9th share as it would include 2/3rd share that she obtained from Subbathal and Senniappan. This, she alienated, in favour of the 2nd defendant by way of settlement deed dated 23.06.2014.

14. Even if I accept the case of the 2nd defendant at its face value, he would be entitled to 1/9th share. In addition, he would be entitled to 2/3rd plus 1/9th that was transferred by the 1st defendant in his favour. The release deed dated 11.12.2006 and settlement deed dated 23.06.2014 would not, in any way, affect the right of the plaintiff who had been vested with 1/9th share, immediately on death of Pongaiya Gounder on 10.12.1994.

15. Mr.P.A.Sai Govindaraja pointed out that the plaintiff seeks for 1/3rd share. The plaintiff can even seek for the moon but the court can grant only the relief which the Plaintiff would be entitled to. In any event, the document is executed inter se by a co-owner, viz., the first



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defendant, to another co-owner, viz., the second defendant, in exclusion of the plaintiff. The Plaintiff had also pleaded that the settlement deed will not bind her and that she is ignoring the same. This is clear from paragraph 3 of the plaint. By way of amendment application, she clarified about the stand taken by her earlier in the suit. The suit continues to be one for partition and the cause of action has not changed by virtue of amendment. The plaintiff only seeks to clarify what has been already pleaded by her in paragraph 3. Unless and otherwise the Court comes to the conclusion that the Plaintiff is entitled to relief, the relief sought for in the amendment application cannot be granted. I do not find any fault in the decision of the learned Subordinate Judge, in allowing the application for amendment.

This Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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V. LAKSHMINARAYANAN,J.

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To

The Subordinate Court, Mettupalayam.

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