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C.R.P.[NPD].No.4662 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.4662 of 2024

J.Mohanakrishnan

.. Petitioner

Vs.

1.R.Ravichandran

2.J.Lakshmi Kantham

3.J.Gajalakshmi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the impugned order dated 22.04.2024 passed by the learned I Additional Judge, City Civil Court, Chennai in O.S.Sr.No.15636 of 2024 and direct the I Additional Court to register the original suit for numbering and summon the defendants for witness and proceed with accordance to the law.

For Petitioner : Mr.P.Manikannan

ORDER

The Civil Revision Petitioner has been filed seeking to set aside the order dated 22.04.2024 passed by the learned I Additional Judge, City Civil



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Court, Chennai in O.S.Sr.No.15636 of 2024.

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2.The brief facts of the case are as follows:

2.1.The petitioner/plaintiff's father inherited $1/6^{\text{th}}$ share from his ancestral property and later his father purchased the other $5/6^{\text{th}}$ share from his siblings and mother and developed the property and thereafter, sold some extent of the property. The plaintiff's father died intestate on 17.05.1993, leaving 2310 sq.ft of the said property. Later, the mother of the plaintiff sold the entire extent of 2310 sq.ft to the 1st defendant on 11.12.1995. According to the petitioner, he is entitled for $1/3^{\text{rd}}$ share in the property sold by his mother and hence, he seeks to avoid the document executed by his mother, when the petitioner and his sister were minors. The suit filed by the petitioner has been rejected at the time of deciding the maintainability in SR stage itself on the ground that the plaintiff has already filed the suit in O.S.No.5295 of 2002, seeking for partition in the very same property along with other property. Aggrieved over the same, the petitioner preferred an appeal in A.S.No.115 of 2017, which was dismissed and S.A.No.1008 of 2022, filed by the petitioner also came to be dismissed. Ultimately, the Special Leave Petition Civil No.12985 of 2023 also



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dismissed by the Hon'ble Apex Court on 14.07.2023. Therefore, the trail Court taking note of the fact that the sale deed dated 11.12.1995 is also the subject matter of the issue in the earlier suit where the Court has specifically recorded the fact that sale made by natural guardian has to be challenged by the minor within a period of three years after attaining majority. It has also been recorded that the petitioner's mother sold the subject property for the benefit of the petitioner and his sister, who is the 3rd respondent herein. Therefore, the suit in O.S.Sr.No.15636 of 2024 is rejected as the issue was already decided in the earlier suit. Challenging the said finding the present Civil Revision Petition has been filed.

3.Learned counsel appearing for the petitioner submitted that the petitioner's mother, who is the widow in the joint family is not a guardian for the minor. Therefore, the sale made by her is not valid. Further, the Article 65 of the Limitation Act will apply for the recovery of possession in respect of the minor's share in the property. The sale made by the guardian without permission of the Court is void in law. Therefore, the suit is maintainable.



4.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5.Upon hearing and perusal of the records, it is seen that no doubt the Court below has rejected the suit even before numbering. But, the fact remains that the trial Court has gone into issue and rejected the suit on the ground that it is clear case of re-litigation. It is the admitted fact that the petitioner/plaintiff had filed the suit in O.S.No.5295 of 2002 on the file of the XIII Assistant Judge, City Civil Court, Chennai seeking for partition and possession in the various properties. In the said suit, the following issues were framed.

“1.Whether the suit property is the absolute property of A.N.Jayaraman as contended of the defendant?

2.Whether the plaintiff have a 2/3rd share with the suit property?

3.Whether the suit is bad for non joinder of necessary parties?

4.Whether the suit is barred by limitation?



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5. Whether the plaintiffs are not entitled to past

and future mense profit?"

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6. The subject matter of the present suit is also one of the subject properties in the earlier suit. In the said suit, the Court has clearly recorded that no prayer was sought to declare the sale executed by the petitioner's mother is null and void and hence the same is barred by limitation and dismissed the suit. The issue with regard to the sale made by the mother of the petitioner in the year 1995 has already reached finality. Therefore, this Court is of the view that, the parties cannot be allowed to litigate the issue once again by way of re-litigation.

7. As far the contention of the petitioner that the widow viz., mother is not a natural guardian in the joint family, this Court is of the view that as per Section 6 of the Hindu Minority and Guardianship Act, (hereinafter referred as 'the Act') the mother is the natural guardian of the minor in the absence of father. Further, Section 8 of the Act, bars natural guardian to deal with the property without the permission of the Court and Section 8 (3) of the Act,



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makes it clear that any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him. Section 12 of the above Act says that when a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest. Be that as it may, as per Section 8 (3) of the Act, the disposal of the immovable property by the natural guardian is voidable. However, the disposal must be avoided within three years from the date of attainment of majority by the minors. Even in the earlier suit filed by the petitioner, the same issue has been raised and it has been negatived and hence, the issue attained finality. Once the issue reached finality in the judicial forum, the same cannot be re-opened by way of re-litigation.

8.In this regard, it is relevant to refer the judgment in **T.Arivanandam Vs. T.V.Satyapal** reported in **AIR 1977 SC 2421**, wherein the Honourable Supreme Court has held that



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“Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes decrees with judicial seals brutum fulmen. The long arm of the law must throttle such, litigative caricatures if the confidence and credibility of the community in the judicature is to survive.

9. Similarly, in the judgment in **K.K.Modi Vs. K.N.Modi reported in 1998-3-SCC-573**, the Honourable Supreme Court has held as follows :

“One of the examples cited as an abuse of the process of the Court is re-litigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of



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the court. A proceeding being filed for collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the Court.”

10.In view of the above, litigating the issues which has been already decided is an abuse of process of law and since, the issue in the present case attained finality, this Civil Revision Petition stands dismissed. No costs

19.11.2024

rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The I Additional Judge,
City Civil Court, Chennai



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N.SATHISH KUMAR, J.



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