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C.R.P.(PD).No.4928 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4928 of 2024

and

C.M.P.No.27752 of 2024

Hayanth Basha

... Petitioner

Versus

1.Habbiburahman
2.Habibunisha
3.Jakir Hussain
4. Umar Farook
5.Hairunnisha Begum
6.Najirunnisha Begam
7.Nooruthudha Begam
8.Kursith Begam
9.Fathima Bibi
10.Barakkathunnisha
11.Mahaboob Nisha
12.Shansulthudha

... Respondents

For Petitioner : Mr.V.Elangovan

Prayer: Civil Revision Petition filed under Article 227 of the

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Constitution of India to set aside the Fair and Decretal order dated 04.09.2023 made in I.A.No.07 of 2022 in O.S.No.33 of 2021 on the file of the Principal District Judge, Perambalur by allowing this civil revision petition.

ORDER

This civil revision petition challenges the order passed by the learned Principal District Judge, Perambalur in I.A.No.7 of 2022 in O.S.No.33 of 2021 dated 04.09.2023.

2. The 2nd defendant in the suit is the civil revision petitioner.

O.S.No.33 of 2023 is filed for the following reliefs:

"A. To declare that the partition deed dated 03.10.2007 is illegal, void and nonest.

B. Pass a preliminary decree granting plaintiffs 2/16 after deducting 1st defendant 1/8th share in the suit property.

C.Pass a final decree by appointing an Advocate Commissioner divide the suit property and allots plaintiff shares in the suit scheduled property to plaintiffs Direct the defendants to deliver the separate possession of the property.



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D.Award cost of the suit."

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3. The case of the plaintiff is that the property belonged to one KA.Abdul Muthalif, the father of the plaintiff and the defendants 2 to 11. Abdul Muthalif passed away leaving behind the parties to the suit to succeed to the estate. He impleaded his mother Habibunnisa, as a party to the suit. He conceded that on the death of Abdul Muthalif, Habibunnisa would be entitled to 1/8th share and in the remaining 7/8th share, he claimed that he is entitled to 2/16th share.

4.Summons were served on the defendants. The defendants entered appearance. The 2nd defendant filed an application for rejection of plaint.

5. His plea is two folds one is that the suit is barred by limitation since the partition deed impugned in the suit is of the year 2007 and the suit has been filed in the year 2021. The 2nd plea is that the plaintiff, who is the 1st son of Abdul Muthalif, had executed a release deed in the year 1991 and moved away from the family and therefore there is no cause of action in the



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suit.

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6. The learned Trial Judge received the counter from the plaintiff and proceeded to dismiss the petition. Hence this revision.

7. I heard Mr.V.Elangovan for the civil revision petitioner. Mr.V.Elangovan relying upon Article 59 of the Limitation Act, 1963 and pleads that a suit to set aside the document should be filed within three years. He points out that the partition deed which is sought to be set aside in the suit was entered into on 03.10.2007, whereas the suit had been filed in May 2021. He states that 14 years have gone by and therefore suit is hopelessly barred by limitation. He further points out that the plaintiff had executed a release deed on 10.06.1991 relinquishing all his rights and interest over the family properties and that he received a sum of Rs.1,90,000/- as his share in the joint family income. Having released his right over the properties in 1991, he is not entitled to present the suit in the year 2021. Therefore, there is no cause of action for the suit.



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8. I have carefully considered the submissions of Mr.Elango.

9. At the time of considering an application for rejection of plaint, the Court is concerned only with the averments made in the plaint and the documents that are filed therewith. This is because rejection of plaint is plea of demurrer. The Court should take the avements made in the plaint to be true and thereafter, come to the conclusion that the suit is barred by law or does not disclose the cause of action.

10. Here is a suit presented amongst the legal heirs of the deceased Muslim gentleman. Unlike Hindu Law, children do not have share in the property of the father, as long as the father is alive. Muslim Law does not know of the ancestral properties. Whatever comes to the father after the death of his ancestors, he takes it only as a self acquisition. Therefore, the plea that the plaintiff relinquished his right by way of settlement deed dated 10.06.1991 over the joint family assets cannot be countenanced. Apart from that, the plaintiff has not pleaded anything about the document dated 10.06.1991. It is for the defendants to plead about this document and prove



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the same at the time of trial. If a plea requires evidence, obviously it cannot be ground for rejection of plaint.

11. Insofar as the plea that the document had been registered on 03.10.2007 and the suit was presented in May 2021 and hence the same suit is barred is concerned, a perusal of the paragraph 10 of the plaint shows that the plaintiff came to know about the document only when he applied for Encumbrance Certificate in July 2019. The suit having been filed within 2 years from July 2019, obviously it is not barred by time. In addition, I cannot impute knowledge to the plaintiff of the document dated 03.10.2007, because the plaint specifically states that the plaintiff is not a party to the said document. In paragraph 10 of the plaint, the plaintiff alleges that out of 13 legal representatives of late K.A.Adbul Muthalif, only 10 were parties to the partition deed. A person, who is not a party to a document can get the knowledge about the same, only when he gets to know of the case. The effort in this case had been taken in the year July 2019. As the plaintiff is not a party to the documents and since he came to know of the same only in 2019, I cannot hold the suit to be barred. Since both the points fail, I am not



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inclined to entertain this civil revision petition.

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Hence, this civil revision petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

To

Principal District Judge, Perambalur



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V.LAKSHMINARAYANAN, J.

arr

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