



CRP.No.4211 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.4211 of 2019
and
CMP.No.27466 of 2019

1.Saraswathi
2.Jeyabackiam
3.Chinnathayee
4.Mohanasundaram
5.Mangalam

... Petitioners

Vs.

Kamalam

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 03.10.2019 made in I.A.No.533 of 2018 in OS.No.122 of 2015 on the file of the Sessions (Fast Track Mahila) Judge, Namakkal.



CRP.No.4211 of 2019

For Petitioners : Mr.T.Danyakumar

For Respondent : Mr.T.L.Thirumalaisamy

ORDER

The present Revision is filed challenging the order dismissing the application filed by the petitioners/defendants for rejection of the plaint.

2. The respondent herein filed a suit in OS.No.122 of 2015 seeking declaration that release deed allegedly executed by her in favour of the fifth defendant dated 09.10.2000 was not binding on her. She also prayed for preliminary decree for partition of 1/6th share in the suit property.

3. Admittedly, the plaintiff and the defendants 1, 2, 4 & 5 are siblings. The plaintiff and the defendants 1,2, 4 and 5 are children of Subbaraya Gounder. The plaintiff and the defendants 1 & 2 are children of Subbaraya Gounder through his first wife Periyathayee and the defendants 4 & 5 are children of Subbaraya Gounder through his second wife Chinnathayee who was arrayed as third defendant in the suit.



CRP.No.4211 of 2019

WEB COPY

4. Under the release deed, the plaintiff said to have released her share in favour of the fifth defendant. Before filing of the suit the plaintiff issued legal notice dated 09.12.2010 wherein, she referred to the release deed dated 09.10.2000 and execution of the same. It was specifically averred by the petitioner/plaintiff in the legal notice that release deed was created by forgery.

5. The petitioners/defendants 1 to 5 filed an application in IA.No.533 of 2018 seeking rejection of the plaint on the ground that the suit is barred by limitation.

6. The learned counsel for the petitioners submitted that when the respondent/plaintiff referred the release deed in her legal notice dated 09.12.2010, it can be safely presumed that she acquired knowledge about the same as early as 2010. In such case, the present suit seeking declaration to set aside the release deed has been filed beyond the period of three years. Therefore, the suit prayer one is barred by limitation on the face of it.



CRP.No.4211 of 2019

WEB COPY

7. Even assuming suit prayer is barred by limitation the plaint cannot be rejected in its entirety. The second prayer in the suit is for partition of the respondent/plaintiff's 1/6th share in the suit property. The cause of action for partition is continuing one. Of course, as far as the second prayer is concerned it is always open to the petitioners/defendants to take shelter under the release deed dated 09.10.2000 and resist the claim for partition. Further whether the release deed dated 09.10.2000 is forged document or not is a disputed question of fact and has to be decided only in a full fledged trial. Therefore, the second prayer on the basis of averment found in plaint as well as the plaint documents is very well maintainable. When entire plaint is not barred by limitation, merely because, one prayer in the plaint appeared to be barred by limitation, the petitioners/defendants cannot seek rejection of whole plaint. It is settled law plaint cannot be rejected in part. Hence, I do not find any illegality or irregularity in the order passed by the Court below and consequently, the Civil Revision Petition is dismissed by confirming the impugned order. However, it is made clear that the petitioners are at liberty to raise all their defence including the question of limitation at the time of final



CRP.No.4211 of 2019

disposal.

WEB COPY

8. The learned counsel for the petitioners submitted that the suit is of the year 2015. Therefore, time may be fixed for disposal of the suit. Eventhough this Court is not inclined to fix any time limit for disposal of the suit, taking into consideration that the suit is of the year 2015, the trial Court is directed to dispose of the same as expeditiously as possible.

9. With the above directions, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation Case : Yes/ No
dna

To

The Sessions (Fast Track Mahila) Judge, Namakkal.

5/6



WEB COPY



CRP.No.4211 of 2019

S.SOUNTHAR , J.

dna

CRP.No.4211 of 2019
and
CMP.No.27466 of 2019

03.01.2024