



C.R.P(MD)No.246 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.246 of 2024

and

C.M.P(MD)No.1123 of 2024

D.Kamaraj

... Petitioner /
1st Defendant

Vs.

1.Manonmani

2.Minor Kishore
Represented by his Guardian
Dhanasekaran

3.Vijaya @ Vijayalakshmi

4.Annalakshmi

5.Dhanasekaran

6.Indhra Mahalakshmi @ Lakshmi

... Respondents /
Plaintiffs 1 to 6

7.Thiruppathi

8.Maheswari

... Respondents /
Defendants 2 & 3

1/8



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Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to the plaint in O.S.No.454 of 2023 on the file of the Sub Court, Theni and to strike off the same.

For Petitioner : Mr.B.Rajesh Saravanan
for Mr.Shankar Ganesh

For Respondent : Mr.P.Mahendran
for R.1 to R.6

Ms.M.Athi Lakshmi
for R.7 & R.8

ORDER

Heard both sides.

2.O.S.No.454 of 2023 has been instituted on the file of Sub Court, Theni for declaration that the sale deed dated 30.07.1999 standing in the name of the revision petitioner herein is invalid and for other reliefs including partition.

3.It is seen that the suit property originally belonged to one Sami Thevar. He had two daughters and two sons (Veerammal, Chittammal, Mayathevar & Periya Karuppa Thevar). The legal heirs of Mayathevar



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executed relinquishment deed dated 31.03.1992 in favour of Periya Karuppa Thevar. After the demise of Periya Karuppa Thevar, they unilaterally cancelled the earlier relinquishment deed and the same was also registered on 16.08.1996 as Document No.2643/1996 on the file of Sub Registrar Office, Theni. On 30.07.1999, the legal heirs of Periya Karuppa Thevar sold the suit property in favour of the revision petitioner vide registered sale deed bearing Document No.4169/1999. The revision petitioner points out that in the year 2000, O.S.No.136 of 2000 was filed on the file of the District Munsif Court, Periyakulam by Verammal and her daughter Maniyammal filed partition suit in respect of the suit property and another three items of property. The suit came to be dismissed for default on 27.09.2001. The petitions filed for restoration was also dismissed. CMA questioning the dismissal was also dismissed on 14.11.2011.

4.The case of the revision petitioner is that in these circumstances the present suit is hopelessly barred by limitation and that it is also bereft of any cause of action. The revision petitioner would contend that the plaintiffs in the present suit were fully aware of the execution of the sale



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deed in favour of the revision petitioner way back in the year 1999 and that therefore the present suit filed in the year 2023 will not lie. The revision petitioner therefore wants this Court to strike of the suit itself from the file of the Court below.

5.The learned counsel for the plaintiffs / respondents would contend that after the cancellation deed was executed and registered on 16.08.1997, the property comprised in Survey No.358 was purchased by the legal heirs of Periya Karuppa Thevar. According to the plaintiffs, the unilateral cancellation was accepted by them. The plaintiffs would point out that after purchasing Survey No.358 from the plaintiffs and others, the vendors of the revision petitioner surreptitiously sold Survey No.357 in favour of the revision petitioner. The plaintiffs plead ignorance of the partition suit instituted by Veerammal and her daughter Maniyammal.

6.The learned counsel for the respondents also contends that when the petitioner is having an effective alternative under Order VII Rule 11 of CPC, the question of maintaining this revision petition under Article 227 of Constitution of India will not arise at all.



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WEB COPY 7.The learned counsel appearing for the respondents relied on the following decisions:

- a) (2019) 9 SCC 539 (Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Others Vs Tuticorin Educational Society & Others)
- b) C.R.P(MD)No.2635 of 2023 (Annadurai Vs Santhanakrishnan & Others)
- c) C.R.P.No.852 of 2021 (Shanmugam Vs The Chief Secretary / Chairman & Others)
- d) C.R.P(MD)No.268 of 2024 (C.Karthikeyan & Others Vs R.Ambritha & Another)

The respondents wants this Court to dismiss the Civil Revision Petition.

8.I carefully considered the rival contentions and went through the materials on record. I must endorse the stand of the learned counsel for the revision petitioner that a deed of unilateral cancellation could not have been registered and such registration is null and void. He relied on the Full Bench decision rendered by the Madras High Court reported in **2022 (5) CTC 257 (Sasikala Vs. The Revenue Divisional Officer)** and



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AIR 2011 Mad 66 (Latif Estate Line India Ltd. & Others Vs Hadeeja

Ammal & Others).

9.Be that as it may, the Hon'ble Supreme Court as well as this Court have consistently taken the view that except in exceptional cases, Article 227 of the Constitution of India ought not to be invoked for striking off a suit from the file of the Court. All the 4 case laws relied by the learned counsel for the respondents are in support of the aforesaid proposition. It is because of this, I am not in a position to delve deeper in the facts of the case.

10.The learned counsel for the revision petitioner states that on the next hearing date, written statement would be filed. The revision petitioner is at liberty to raise all the contentions now projected in this CRP in his written statement. Though I am reluctant to issue a direction for speedy disposal, considering the exceptional facts and circumstances of this case, I direct the learned Sub Judge, Theni to dispose of O.S.No. 454 of 2023 on merits and in accordance with law within a period of five months from the date of receipt of a copy of this order.



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11.This Civil Revision Petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

The Sub Court, Theni.



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G.R.SWAMINATHAN, J.

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