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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.R.P(MD)No. 805 of 2021

and

C.M.P(MD)No. 4354 of 2021

Minor S.Samuel

...Petitioner

[Minor represented by his Father and natural guardian Mr.Sathiyavan]

Vs.

1. Sathya

2. P.Shanthi

... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the Fair and Decretal Order, dated 03.09.2019 passed in I.A.No.94 of 2019 in O.S.No.395 of 2013 on the file of the Sub Court, Melur by allowing this Civil Revision Petition.

For Petitioner : M/s.M.Kannan

For Respondents : Mr.N.Dilip Kumar, for R-1

R-2 No appearance



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ORDER

This Civil Revision Petition is filed by the plaintiff in the suit against the Fair and Decreetal Order, dated 03.09.2019 passed in I.A.No.94 of 2019 in O.S.No.395 of 2013 on the file of the Sub Court, Melur.

2. The plaintiff in the suit is the revision petitioner and the defendants in the suit are the respondents herein. For the sake of convenience, the parties shall be referred to as plaintiff and defendants as per the ranking in the suit.

3. The plaintiff has filed a suit in O.S.No.395 of 2013 for declaration and injunction. In the said suit, an exparte decree was passed in favour of the plaintiff. Thereafter, the defendants have filed an application in I.A.No.94 of 2019 in O.S.No.395 of 2013 to set aside the exparte decree along with condone delay application to condone the delay of 544 days in filing and the same was allowed. Aggrieved over the same, the plaintiff had filed the Civil Revision Petition.



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4. It is seen that the plaintiff's father and the defendants are brother and sisters and their father had executed a gift settlement deed dated 25.05.2007 in favour of the 1st defendant Sathya, but subsequently, the father had cancelled the said gift deed, dated 09.07.2009. Again, he had executed a gift settlement deed dated 02.09.2009 granting 25 cents in favour of the plaintiff and 75 cents in the name of the 1st defendant. The said settlement 02.09.2009 was acted upon.

5. Subsequently, the settlement was challenged in O.S.No.185 of 2013 the same was dismissed for default. In fact, the defendants herein had filed restoration application and the same is pending. It is seen from the records that cancellation deed dated 09.07.2009 was challenged in the said suit, however period of limitation to challenge is three years, but the said suit is filed beyond three years. Therefore, the impugned order passed by the Court below is liable to be set aside.



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6. Accordingly, this Civil Revision Petition is allowed. The impugned Fair and Decreetal Order, dated 03.09.2019 passed in I.A.No.94 of 2019 in O.S.No.395 of 2013 on the file of the Sub Court, Melur, is hereby set aside. No Costs. Consequently, connected miscellaneous petition is closed.

30.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Sub Court, Melur.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Order made in
C.R.P(MD)No.805 of 2021

30.10.2024