



C.R.P(MD)No.1977 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1977 of 2019

and

C.M.P(MD)No.10184 of 2019

Maheswari

... Petitioner/4th Defendant

Vs.

1.Nagakanni

... 1st Respondent/Plaintiff

2.Pappathi (Died)

3.Muthiah (Died)

4.Priya

5.Tamil Nadu Government,
Represented by the District Collector,
Karur District.

6.The Sub Registrar,
Krishnarayapuram,
Karur District.

7.The Tahsildar,
Krishnarayapuram Taluk,
Karur District.

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8.The Executive Officer,
Krishnarayapuram Town Panchayat,
Krishnarayapuram Taluk,
Karur District.

... Respondents 2 to 8/
Defendants 1 to 3 & 5 to 8

9.Shanthi

10.Karthick

11.Mathukaraiveni

... Respondents

(Respondents 9 to 11 are brought on record as legal heirs of the deceased third respondent vide Court order, dated 06.10.2023 made in C.M.P(MD)No.4257 of 2022 in C.R.P(MD)No.1977 of 2019)

(Memo, dated 08.04.2022 is recorded as second respondent died, issueless and there is no need to take steps vide Court order, dated 12.02.2024 made in C.R.P(MD)No. 1977 of 2019)

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.55 of 2019 pending on the file of the Subordinate Judge, Kuzhithalai, Karur District.

For Petitioner : Mr.A.Jayarama Chandran

For R-1 : Mr.Niranjan S.Kumar



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For R-2 to R-4 &
R-8 to R-11 : No appearance

For R-5 to R-7 : Mr.C.Satheesh
Government Advocate

ORDER

The instant revision petition has been filed by the fourth defendant in O.S.No.55 of 2019 on the file of the Sub Court, Kuzhithalai, Karur District seeking to strike off the plaint in the said suit.

2. The suit schedule properties are originally owned by one Saradhammbal, wife of Maruthaiya. They had two daughters by name, Nagakanni and Pappathi and a son by name Muthaiah. The property that was standing in the name of Saradhammbal was gifted under a registered document in favour of one of her daughters, namely Pappathi on 28.01.2002. The said Pappathi had executed a registered sale deed in favour of one Priya, who is her sister's daughter on 25.04.2013. The said Priya had executed a registered sale deed in favour of the fourth defendant / revision petitioner on 06.02.2019. The present suit came to



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be filed on 27.03.2019 by the eldest daughter of Saradhammbal, namely Nagakanni, alleging that the gift deed executed by Saradhammbal in favour of Pappathi on 28.01.2002 is not valid in the eye of law and to set aside the sale deeds executed by Pappathi in favour of Priya and the consequential sale deed executed by Priya in favour of the fourth defendant are null and void. She further prayed for partition of her 1/3rd share and for separate possession.

3. The fourth defendant in the present suit has filed this revision petition alleging that the suit is an abuse of process of law. According to the learned Counsel appearing for the revision petitioner, Saradhammbal had executed a gift deed, on 28.01.2002 and she passed away only in the year 2010. When the plaintiff admits that Saradhammbal is the owner of the property, she has no right to question the settlement deed executed by her in favour of the first defendant. The first defendant had executed a sale deed in favour of the plaintiff's daughter (Priya) on 25.04.2013. The plaintiff had not raised any objection at the relevant point of time. Only when the third defendant (Priya) had sold the property to the fourth



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defendant on 06.02.2019, suddenly the suit has been filed alleging that though Saradhammbal is the owner of the property, she is not entitled to execute a gift deed in favour of the third defendant. According to them, the plaintiff and the other defendants are colluding together in order to deprive the rights of the fourth defendant, who is not a member of the family. Hence, according to them, it is an abuse of process of law and the plaint has to be struck down.

4. Per contra, the learned Counsel appearing for the revision petitioner contends that they are questioning the gift deed executed by Saradhammbal in favour of Pappathi and the consequential sale deeds executed by the purchasers. Once the settlement deed goes and the sale deeds are declared null and void, the plaintiff would be entitled to 1/3rd share. Therefore, she has got a cause of action to file the present suit. He further contended that the issues raised by the revision petitioner can only be subject matter of trial and the plaint cannot be rejected since no ground has been made out for rejection of plaint.



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5. This Court is of the considered opinion that all the pleas raised by the learned Counsel appearing for the revision petitioner can only be the subject matter of trial. Rejection of plaint could only be decided on the basis of the plaint averments and the documents filed along with the plaint. Though the arguments of the learned Counsel appearing for the revision petitioner are attractive, when the validity of settlement deed, dated 28.01.2002 is under dispute, the Trial Court has to decide the said issue before granting a decree for partition.

6. In such view of the matter, this Court is of the considered opinion that the plaint cannot be rejected at this stage. Therefore, there are no merits in this Civil Revision Petition. Hence, this Civil Revision Petition stands dismissed. However, the revision petitioner / fourth defendant is at liberty to raise all these issues before the Trial Court.

7. Considering the fact that the suit is pending for the past five years, the Trial Court is directed to dispose of the suit on or before **31.08.2024** and the compliance may be reported to the Registry.



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8. With the above said observations, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

05.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Subordinate Judge,
Kuzhithalai,
Karur District.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.1977 of 2019

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