



C.R.P. (MD).Nos.2204 and 2209 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)Nos.2204 and 2209 of 2019

and

C.M.P(MD) No.11491 of 2019 in C.R.P(MD) No.2204 of 2019

C.R.P(MD) No.2204 of 2019:

Sevuthiyammal

1. Vadivel
2. Duraisamy
3. Dhanalakshmi

... Petitioners/Petitioners/Plaintiffs

-vs-

1. Murugesan

2. Kanagaraj

3. Perumal

... Respondents/ Respondents /
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decretal order dated 21.10.2019 made in I.A.No.3 of 2019 in O.S.No.276 of 2012 on the file of the District Munsif Court, Lalgudi.

For Petitioners : Mr.R.Sundar

For Respondents : No appearance



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C.R.P(MD) No.2209 of 2019:

Sevuthiyammal

1. Vadivel
2. Duraisamy
3. Dhanalakshmi

... Petitioners/Petitioners/Plaintiffs
-vs-

1. Murugesan

2. Kanagaraj

3. Perumal

... Respondents/ Respondents /
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decretal order dated 21.10.2019 made in I.A.No.4 of 2019 in O.S.No.276 of 2012 on the file of the District Munsif Court, Lalgudi.

For Petitioners : Mr.R.Sundar

For Respondents : No appearance

COMMON ORDER

The plaintiffs in O.S.No.276 of 2012, on the file of the District Munsif Court, Lalgudi, are the revision petitioners herein. The suit was filed for the relief of declaration of title and for permanent injunction.



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2. According to the plaintiffs, the suit properties are the self acquired properties of their father and he had executed a Will in favour of the plaintiffs on 10.09.1991 and his father had passed away on 09.05.1995 and thereafter, he had become the owner of the property. On the basis of the said averments, the prayer for declaration of title and permanent injunction was sought for. The defendants have contended that while their father was alive he had executed two sale deeds dated 26.03.1996 and 03.10.1996 in their favour and therefore the plaintiffs cannot claim any title on the basis of the Will.

3. When the suit was posted for judgment, the plaintiffs had filed I.A.No.3 of 2019 under Order VI Rule 17 of C.P.C, for the purpose of amending the plaint to incorporate the prayer to declare the sale deed dated 26.03.1996 as null and void and I.A.No.4 of 2019 to reopen the case. Both the applications came to be dismissed by the trial Court on the ground of limitation. Challenging the same, the present Civil Revision Petitions have been filed by the plaintiffs.

4. The learned counsel appearing for the petitioners/plaintiffs had contended that the sale deed which is sought to be set aside is already referred



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to in paragraph No.10 of the plaint. However, by mistake, a prayer has not been sought for. That apart, the issue of limitation need not be considered at the time of allowing the amendment application and that can be a subject matter of the trial. The learned counsel appearing for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in (***Pankaja and another Vs. Yellappa (Dead) by LRS. and others***) reported in (2004) 6 SCC 415 to impress upon the Court that it is not a straight jacket formula to reject the amendment application on the ground of limitation, especially, when the issue of limitation is a mixed question of fact and law and there is a dispute with regard to the date of arising out of cause of action. Hence, he prayed for allowing these Civil Revision Petitions.

5. Though notices were served upon the respondents and their names are printed in the cause list, they have not chosen to appear either in person or through their counsel.

6. Pending Civil Revision Petitions, the defendants 3 and 4 in the suit who were already set *exparte*, has filed an application to set aside the *exparte* order and the said applications have been allowed and now the suit is posted



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for filing of the written statement of the defendants 3 and 4. Therefore, the Revision Petition arising out of I.A.No.4 of 2019 has become infructuous and no further orders are called for.

7. As far as the prayer for amendment of the plaint is concerned, there is a reference about the sale deed dated 26.03.1996 even in paragraph No.10 of the plaint. The suit has been filed in the year 2012, and the suit was pending from the year 2012 to 2019. Even on the date when the suit was filed, such a prayer had become time barred. That apart, the suit is pending for more than seven years. The plaintiff has not chosen to take any steps to incorporate the prayer for declaration to set aside the said document. That apart, the trial was over and the suit was posted for judgment. In such circumstances, the trial Court has rightly rejected the application for amendment in the plaint, this Court does not find any merit in these Civil Revision Petitions.

8. Hence, both the Civil Revision Petitions stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.



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NCC : Yes/No
Index : Yes / No
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To

1. The District Munsif Court,
Lalgudi.



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