

C.R.P (PD) No.442 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2025

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THE HONOURABLE MS. JUSTICE P.T. ASHA

C.R.P (PD) No.442 of 2025

and

C.M.P.No. 2648 of 2025

1.Selvaraj

2.Shanthi

3.Ashwin

... Petitioners

VS.

1.Poovathal

2.Jayamani

3.Vennila

4.Sudharsan

... Respondents



C.R.P (PD) No.442 of 2025

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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 19.11.2024 made in IA.No.2 of 2023 in OS.No.112 of 2023 on the file of the Sub Court, Mettupalayam.

For Petitioners : Mr. Gowtham Thirumalai Rajan
Senior Counsel
For Mr. G.Prabhakar

For Respondents : Mr. C.R.Prasanan
2 to 4

ORDER

Challenging the dismissal of their application for rejecting the plaint filed in IA.No.2 of 2023 in OS.No.112 of 2023 on the file of the Sub Court, Mettupalayam, the defendants are the revision petitioners before this Court. It would be necessary to briefly allude to the facts of the case. The parties are referred to in the same litigative status as before the Trial Court.



WEB COPY 2. The plaintiffs filed the above suit for cancelling the release deed dated 31.03.2000 alleged to have been executed by plaintiffs 1 and 2 in favour of the 1st defendant, to declare the settlement deeds executed in favour of the 2nd and 3rd defendants respectively as null and void not binding on the plaintiffs and for a partition.

3. The plaintiffs had contended that the suit properties were self acquired properties of one Karuppan who had two sons and three daughters, namely, Palaniappan, Rayappan, Subathal, Chinnammal and Rangammal. The said Karuppan and his children were in peaceful possession and enjoyment of the properties. The said Karuppan died 50 years ago. His elder son Palaniappan died 30 to 40 years ago leaving behind him his widow Palaniammal, his daughters, Valliammal, Savithiri, Pappathi, Thangammal, Muthammal and Chitra.



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4. Likewise, the said Rayappan died about 30 years ago leaving behind his widow Poovathal, two daughters namely, Kannammal, Jeyamani and a son namely Selvaraj to succeed his properties. It is submitted that recently one of the daughters namely Kannammal died intestate on 21.10.2022 leaving behind her daughter Vennila and son Sudharsan to succeed her, her husband having predeceased her. As such the widow of Rayappan, Poovathal and her daughter Jayamani, are the plaintiffs 1 and 2 herein. The daughter and son of the late Kannammal are the plaintiffs 3 and 4 herein. The 1st defendant is the son of the 1st plaintiff and the defendants 2 and 3 are wife and son of the 1st defendant.

5. It is the case of the plaintiffs that till the life time of the original owner Karuppan all parties were living together without any difference of opinion. After the demise of Karuppan and his sons Palaniappan and Rayappan cordiality amongst the family members had vanished. This led to the daughters of Karuppan filing a suit for



partition in OS.No.67 of 1998.

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6. In the said suit they had impleaded the legal heirs of Palaniappan but the wife of Rayappan, the 1st plaintiff herein was not added as a party to the proceedings. However, his son the 1st defendant herein and his sisters were added as parties. This suit was being prosecuted by the male member Selvaraj, the 1st defendant herein and his sisters had not taken active part in prosecuting the same.

7. The 1st defendant had requested the plaintiffs 1 and 2 herein to execute a registered power of attorney in his favour during the year 2000 to enable him to effectively represent them in the proceedings. Trusting the words of the 1st defendant they had also executed the document. The partition suit continued for over 25 years. When the plaintiffs had attended funeral ceremony of one of the relatives they were informed by their paternal aunts who are the plaintiffs in OS.No.67 of 1998 that the suit had been disposed of in the year 2020



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itself and 1/5th share in the entire property had been allotted to the paternal aunts within metes and bounds and the share of the other sharers, namely, that of the legal heirs of Palaniappan and Rayappan was left in the joint possession and enjoyment. Therefore, the plaintiffs 1 and 2 and Kannammal the mother of plaintiffs 3 and 4 were under the belief that they would get their share at the earliest.

8. When they came to learn that their paternal aunts are making attempts to alienate their property they had called on the 1st defendant and requested him to amicably arrive at settlement with reference to the shares that has to be allotted to the each of the legal heirs and the 1st defendant was evasive. Thereafter, he had turned hostile and on making enquiry they came to learn that in the guise of power of attorney what was obtained from them was a registered release deed.

9. When they had confronted the 1st defendant, he informed them that the properties were settled on his wife and son. The contention of



the plaintiffs are that this document has been obtained by fraud and misrepresentation and they did not have any intention of releasing their shares. Therefore, the document is *void ab initio*. The 1st defendant has taken advantage of the pendency of the suit for partition to get this document executed from his sisters. Therefore, they have come forward with the suit in question.

10. The 1st defendant on entering appearance in the above suit had immediately taken up an application in IA.No.2 of 2023 to reject the plaint. The grounds for rejection are as follows:

(i)The release deed was executed and there was consensus ad idem amongst the parties.

(ii)The plaintiffs 1 and 2 and the mother of the plaintiffs 3 and 4 had received a sum of Rs.30,000/- each for executing release deed.

(iii)The plaintiffs are very much aware about the proceedings in the partition suit.



C.R.P (PD) No.442 of 2025

WEB COPY

(iv)The suit to declare the documents as null and

void has been filed 23 years after the execution of the deed. Therefore it is barred by limitation.

11. The plaintiffs had filed a counter denying the allegations contained in the petition for rejecting the plaint. The plaintiffs would reiterate the fact that they had executed the document in the belief that it was the power of attorney to enable the 1st defendant to properly prosecute the partition suit. The payment of sum of Rs.30,000/- for executing the release deed has been denied. The plaintiffs in their counter would submit that they have set out a cause of action for filing the above suit. As regards limitation it is a mixed question of fact and law. Therefore, the application for rejecting the plaint deserves to be rejected.

12. The learned Sub Judge, Mettupalayam after considering the arguments of the parties was pleased to dismiss the application by



C.R.P (PD) No.442 of 2025

stating that the plaintiffs have made out a cause of action for filing the suit. As regards limitation the same has to be tested after trial.

13. Challenging the same, the defendants / petitioners are before this Court.

14. Mr. Gowtham Thirumalai Rajan, learned senior counsel appearing on behalf of the petitioners would submit that on the face of the very pleadings it is very clear that the suit is barred by limitation. The plaintiffs are seeking to set aside the release deed that had been executed in the year 2000 by filing the suit in the year 2023, nearly 23 years after the deed was executed and registered. He would submit that the plaintiffs have cleverly omitted to mention the exact date on which they had come into knowledge that what they had executed was only release deed and not a power of attorney deed.



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15. Further, in the plaint the plaintiffs would state that on the perusal of the release deed they had come to know about the fraud played by the defendant. He would submit that the certified copy of the release deed has been applied on 03.04.2023 whereas the plaint prepared on 28.04.2023 which would clearly expose the falsity of the plaintiffs' case. He would therefore submit that the Court below has wrongly dismissed the application filed by them for rejecting the plaint.

16. Per contra, Mr. C.R.Prasanan, would submit that in the case of rejection of the plaint the Court has to be guided only by the plaint and the documents filed along with it. A mere reading of the plaint would clearly set out a cause of action and as regards limitation the plaintiff has in their plaint clearly described as to when they had come into knowledge about the execution of the release deed and immediately thereafter they have filed the suit. Therefore, he would submit that the learned Trial Judge has rightly dismissed the application for rejecting the plaint.



C.R.P (PD) No.442 of 2025

WEB COPY 17. On hearing the counsels and perusing the records particularly the plaint it is seen that the plaintiffs have clearly stated the cause of action based upon which they have approached this Court for setting aside the release deed executed in the year 2000. They have narrated that it was the 1st defendant, their brother who was taking care of the proceedings for partition filed by their paternal aunts and also the fact that the final decree in the partition suit has happened only in the year 2017, in and by which the properties had been partitioned by metes and bounds.

18. It appears that the branch of Rayappan which is the plaintiff and the 1st defendant have not participated in the partition proceedings. The release deed has been obtained within 2 years of the filing of the suit for partition. All of these are matters are to be established during trial of the suit. The plaintiffs have prima facie made out a cause of action and also a case narration to overcome the limitation.



C.R.P (PD) No.442 of 2025

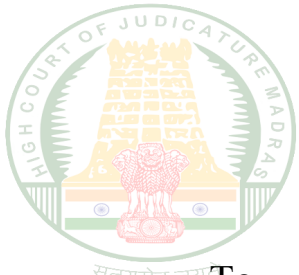
WEB COPY 19. Therefore, the plaint cannot be rejected at this juncture. The learned Sub Judge, Mettupalayam, has rightly dismissed the application. The civil revision petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

03.04.2025

Index: Yes/No

Internet: yes/No

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C.R.P (PD) No.442 of 2025

To
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The Sub Judge,
Mettupalayam.



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C.R.P (PD) No.442 of 2025

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C.R.P (PD) No.442 of 2025

03.04.2025