



WEB COPY



C.R.P.(PD)No.4542 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4542 of 2024
and C.M.P.No.25292 of 2024

Rathina (deceased)

1.Prathiba Mohan

.. Petitioner

Vs

1.B.Gayathri Devi

2.B.Bagath Srinivasan

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decretal order dated 18.07.2024 in I.A.No.5 of 2024 in O.S.No.497 of 2021 on the file of the learned XIX Additional Judge, City Civil Court at Chennai.

For Petitioner : Mr.V.V.Sairam

For Respondents : Mr.P.Satheesh Kumar

ORDER



C.R.P.(PD)No.4542 of 2024

WEB COPY

The civil revision petition challenges the order of the learned XIX Additional Judge, City Civil Court at Chennai in I.A.No.5 of 2024 in O.S.No.497 of 2021, dated 18.07.2024.

2. The petitioners are the defendants and respondents are the plaintiffs in the suit. O.S.No.497 of 2021 is a suit for partition and separate possession. It is the case of the plaintiffs that the property belonged to one Sridhar. Sridhar married one Rathina (1st defendant) and from the wedlock, two children were born namely, Balaji and Prathiba Mohan (2nd defendant). Balaji died on 06.04.2002. He left behind his legal heirs, his wife Gayathri Devi and a son, Bagath Srinivasan. Gayathri Devi and Bagath Srinivasan demanded partition of the properties left behind by Sridhar. Their claim is, by virtue of them being the class – 1 legal heirs, of the deceased Balaji. The claim was resisted by the defendants. Hence, the suit.

3. A written statement was presented and the parties have been contesting the suit. Pending the suit, Rathina (1st defendant) passed away on 31.05.2021. The parties went for trial. The evidence of the plaintiffs



C.R.P.(PD)No.4542 of 2024

has been completed. The 2nd defendant commenced her examination as D.W.1. At that stage, she filed an application namely, a release deed said to have been executed by Rathina (1st defendant) in her favour in document No.4021/2010, dated 25.11.2010.

4. The plaintiffs' claiming that they came to know about the document only at the stage of the examination of D.W.1. They filed an application in I.A.No.5 of 2024. This is an application for amendment of plaint. By way of an amendment, they sought for a declaration that the release deed, the beneficiary of whom is the 2nd defendant, is null and void.

5. This application was opposed by the 2nd defendant pleading that the relief sought for by the amendment is barred by time. According to her, the release deed had been executed in the year 2010 and the amendment application, having been filed in the year 2024, is hopelessly barred by limitation.

6. The learned Trial Judge, considering the affidavit and petition,



C.R.P.(PD)No.4542 of 2024

allowed the amendment application.

WEB COPY

7. Aggrieved by the same, the present revision is at the instance of the 2nd defendant.

8. I heard Mr.V.V.Sairam for the civil revision petitioner and Mr.P.Satheesh Kumar for the respondents. I have carefully gone through the records including the impugned order.

9. The relationship between the parties is not in dispute. The plaintiffs are the wife and son of the brother of the 2nd defendant. The 2nd defendant claims that she was benefited with the release deed by the 1st defendant in the year 2010.

10. Mr.V.V.Sairam points out that even at the time of exchange of notices prior to the presentation of the suit, the 2nd defendant had specifically stated that a release deed had been executed by her mother in her favour. He also draws my attention to the written statement filed by the 2nd defendant to show that this assertion had been pleaded in the written statement too. He states, despite these two circumstances, the



C.R.P.(PD)No.4542 of 2024

plaintiff did not come forth with the amendment application immediately.

He says on and from 2010, the 2nd defendant had succeeded to the share of the 1st defendant/her deceased mother and therefore, the amendment ought not to have been ordered.

11. Per contra, Mr.P.Satheesh Kumar invites my attention to the affidavit filed in support of the amendment application, in particular paragraph – 4. He states that the alleged release deed dated 25.11.2010 was brought to the notice of the Court only by way of an application in I.A.No.4 of 2024. Immediately, on the document being marked as Ex.B3, he pleads that the plaintiffs have come forth with the amendment application. Therefore, he urges the order of the Trial Court be upheld and the revision be dismissed.

12. For applying Article 59 of the Limitation Act, the 3rd column demands the facts entitling the plaintiff to have an instrument set aside should have first come to the knowledge of the plaintiff. A perusal of the reply notice as well as the written statement shows that the 2nd defendant had not disclosed any details regarding the alleged release deed.

13. I have gone through the written statement filed by the 2nd



C.R.P.(PD)No.4542 of 2024

defendant. No document or even a list of document had been enclosed along with the written statement. The first time, the document saw the light of the day was during the course of the trial, when it was marked as exhibit. Immediately, the plaintiffs have filed an application for amendment. Had the document been presented along with the statement in the year 2021 and still the plaintiffs had kept quite till 2024 and beyond, I would certainly rejected the plea of Mr.P.Satheesh Kumar. That is not the situation here. The document was received in 2024 and in 2024 itself, an amendment application had been filed. Hence, I am of the view that Article 59 cannot be applied to reject the case of the plaintiffs.

14. In any event, limitation is mixed question of law and fact and I am sure if the defendant pleads limitation in the additional written statement, the Court will frame an appropriate issue and answer the same.

15. In the light of the above discussions, as the document was brought to the notice of the plaintiffs and the Trial Court only in 2024 and the amendment application had been filed soon thereafter, I am not inclined to entertain the revision.

16. Being a suit for partition and as the parties are closely related,



C.R.P.(PD)No.4542 of 2024

the learned XIX Additional Judge, City Civil Court at Chennai is requested to probe whether there is any possibility of settlement. If he finds any room, he will refer the parties to the Mediation Centre attached to this Court.

17. With the above observations, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.01.2025

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No

kj

To

XIX Additional Judge, City Civil Court at Chennai.

V. LAKSHMINARAYANAN, J.



WEB COPY



C.R.P.(PD)No.4542 of 2024

Kj

C.R.P.(PD)No.4542 of 2024
and C.M.P.No.25292 of 2024

22.01.2025