



C.R.P.No.5256 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5256 of 2024 &
CMP.No.29385 of 2024

Sheela Devi

.. Petitioner

Versus

1.Neelakandan

2.Venkatesan

3.Ellamal

4.Dhanalakshmi

5.Prakash

6.Mahalakshmi

7.Suganya

8.Shantha Kumari Ammal

9.Siva Shankari

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair order and decretal order passed in I.A.No.1 of 2023 in O.S.No.119 of 2022 dated 18.10.2024 passed by the Subordinate Judge, Madurantakam.



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For Petitioner : Mr.P.Chandrasekar

ORDER

This civil revision petition challenges the order passed by the learned Subordinate Judge at Madurantakam in I.A.No.1 of 2023 in O.S.No.119 of 2022 dated 18.10.2024.

2. O.S.No.119 of 2022 is a suit for the following reliefs:

“(i) to declare the sale deed dated 01.12.1984, registered as a document bearing No.864/1984 before the S.R.O. Acharapakkam as null and void and consequently declare the plaintiffs are the absolute owners in connection with the schedule property.

(ii) to declare the power deed dated 04.08.2022, registered as a document bearing No.3872/2022 before S.R.O., Acharapakkam as null and void and consequentially declare the plaintiffs are the absolutely owners in connection with the schedule property.

(iii) to declare the sale deed dated 19.09.2022, registered as a document bearing No.4792/2022 before the S.R.O., Acharapakkam as null and void and



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consequentially declare the plaintiffs are the absolute owners in connection with the schedule property.

(iv) to declare the plaintiffs as the absolute owner of the schedule property.

(vi) consequentially grant an order of permanent injunction restraining the defendants, his men agents or anybody in any manner interfering with the peaceful possession and enjoyment of the schedule property.”

3. The case of the plaintiffs is that the property was purchased by one Subburayan on 27.12.1958. Without the knowledge of the said Subburayan or the plaintiffs, the property had been dealt with by one Chockalingam, the eldest brother of Subburayan. Chockalingam had executed a sale deed in favour of his daughter-in-law, namely, the first defendant on 01.12.1984. Subsequently, the first defendant executed a power of attorney in favour of defendants 2 and 3 on 04.08.2022. On the strength of this power of attorney, a sale deed was executed in favour of the fourth defendant on 19.09.2022. The fourth defendant, in turn, executed a sale deed, within four days of his purchase, on 23.09.2022 in favour of the fifth defendant.



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4. Pleading that their possession was sought to be disturbed by the defendants, the plaintiffs claimed they applied for an Encumbrance Certificate on 22.11.2022 and came to know that their eldest paternal uncle had sold the suit property, though he does not have any right, title, or interest over the same. In order to avoid any dispute, they came forward with the suit for declaration that they are the absolute owners of the property and for consequential reliefs as set forth above.

5. On being served with summons, the third defendant filed an application for rejection of plaint.

6. The third defendant urged that the suit is barred by time, since the sale deed in favour of the first defendant of the year 1984, is sought to be declared as null and void, 38 years after its execution.

7. This was resisted by the plaintiffs pleading that they came to know about the document only after the execution of the sale agreement on 10.08.2022 and that, the plaintiffs were not parties to the 1984 document



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and therefore, the date of knowledge should be taken into consideration for limitation.

8. The learned Subordinate Judge at Madurantakam considered the affidavit and counter and dismissed the application seeking rejection of plaint. He found that the third defendant was not interested in proceeding with the suit and in order to avoid filing of a written statement, she had came forward with the petition. He also pointed out that the first plaintiff is aged about 92 years and being a senior citizen's case, it requires to be disposed of as early as possible.

9. Aggrieved by the dismissal of the rejection of plaint petition, the third defendant is on revision before me.

10. Mr.P.Chandrasekar reiterated the submissions that were made before the learned Subordinate judge.



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11. The principal plea of Mr.P.Chandrasekar is that since the sale deed is of the year 1984, the suit having been filed in December 2022 is hopelessly barred by time.

12. I have carefully considered the submission of Mr.P.Chandrasekar.

13. The suit is not for a mere declaration that the sale deed is null and void. The plaintiffs have sought for declaration of title also. As long as the right of the property has not been extinguished, the right to sue for declaration of title exists. See, **N. Thajudeen v. Tamil Nadu Khadi & Village Industries Board, 2024 SCC OnLine SC 3037.**

14. Apart from that, even if I were to apply Article 59 of the Limitation Act, the suit can be said to be barred only, when three years period has gone by, despite the knowledge of the impugned document. In other words, the suit would be barred by time, if the plaintiffs have come to know about the document and had kept quiet for over a period of three years. The words “first become known to him” in the third column of Article 59 clarifies the situation.



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15. When it comes to rejection of plaint, I have to go by the averments made in the plaint. In paragraph 6 of the plaint, the plaintiffs pleaded that they came to know about the document only when they applied for Encumbrance Certificate on 22.11.2022. The suit having been filed within a couple of months thereafter, I cannot hold it to be barred. In any event, there cannot be a partial rejection of plaint vis-a-vis prayer (i) alone. See, ***Geetha v. Nanjundaswamy, 2023 SCC Online SC 1407.***

16. In the light of the above discussion, I find no reason to interfere with the order of the learned Subordinate Judge. This civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

08.01.2025

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

The Subordinate Judge, Madurantakam.



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V.LAKSHMINARAYANAN, J.

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