

C.R.P.(PD)NO.4238 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 31 / 10 / 2025

ORDER DELIVERED ON: 28 / 11 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P.(PD)NO.4238 OF 2019
AND C.M.P.NO.27644 OF 2019

T.Imanjali

... Petitioner/Petitioner/
Plaintiff

Versus

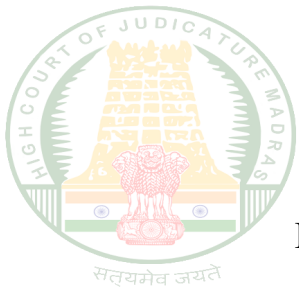
1.Silga Vajramma

2.Silga Joseph

3.M.Ramani

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decreetal Order dated October 30, 2019 passed in I.A.No.5285 of 2018 in O.S.No.4194 of 2014 by the learned III Assistant Judge, City Civil Court, Chennai.



C.R.P.(PD)NO.4238 OF 2019

WEB COPY

For Petitioner : Mr.L.Dhamodaran

For Respondent – 1 : Died steps due

For Respondent – 2 : Notice not ready

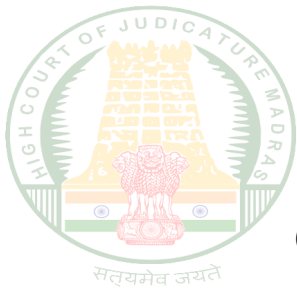
For Respondent – 3 : Mr.N.Ganesh

ORDER

Feeling aggrieved by the Dismissal Order passed in petition filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 in I.A.No.5285 of 2018 in O.S.No.4194 of 2014 by 'the III Assistant Judge, City Civil Court, Chennai' [hereinafter referred to as the 'Trial Court'], the Petitioner therein has filed this Civil Revision Petition.

2.The Revision Petitioner herein is the Plaintiff and the Respondents herein are the Defendants in the Original Suit in O.S.No.4194 of 2014.

3.The Revision Petitioner filed the Complaint on July 25, 2014 seeking the following reliefs:



WEB COPY

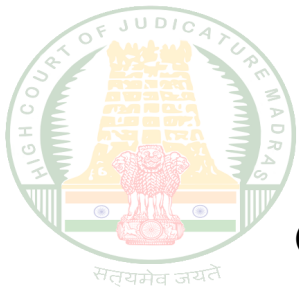
(a).Declaration declaring that the cancellation of Settlement Deed executed by the 1st defendant in favour of the plaintiff vide Doc.No.53 of 2004 dated 09.01.2004 is null and void and valid in law;

(b).Declaration declaring that the execution of Settlement Deed executed by the 1st defendant in favour of the 2nd defendant vide Doc.No.2028 of 2010 is invalid in law and not binding on the plaintiff;

(c).Declaration declaring that the execution of Sale Deed vide Doc.No.2612 of 2013 dated 27.11.2013 executed by the 2nd defendant to in favour of the 3rd defendant is not valid in law and not binding on the plaintiff herein;

(d).Permanent injunction restraining the 3rd defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property;

(e).Permanent injunction restraining the 3rd defendant either demolishing or put up construction in the Suit Schedule Property;



(f) and costs of the suit.

WEB COPY

4.The case of the Revision Petitioner is that the 1st Respondent owned 600 sq.ft. of land and the building on a portion thereof bearing Door No.8, Asirvathapuram, 1st Street, Pulianthope, Chennai – 600 012. The 1st Respondent divided the said 600 sq.ft., into two equal shares i.e., 300 sq.ft. each and executed a Gift Settlement Deed for 300 sq.ft. (Eastern side), which forms the Suit Property in the present Original Suit, in favour of the Revision Petitioner/Plaintiff on January 09, 2004. The Western side portion of 300 sq.ft was bequeathed in favour of the 2nd Respondent. On and after the Gift Settlement Deed, the Revision Petitioner is in possession and enjoyment of the Suit Property. On July 14, 2014, the 3rd Respondent, who is a third party along with her henchmen attempted to enter into the Suit Property claiming that the 3rd Respondent purchased the Suit Property. Immediately, the Revision Petitioner applied for an Encumbrance Certificate and came to know that the 1st Respondent cancelled the Gift Settlement Deed dated January 09, 2004 which was executed in favour of the Revision Petitioner vide Cancellation Deed dated October 09, 2006. and later executed a Gift Settlement Deed in favour of the 2nd Respondent



C.R.P.(PD)NO.4238 OF 2019

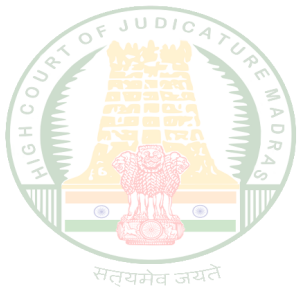
vide Gift Settlement Deed dated October 04, 2010. In turn, the 2nd

Respondent executed a Sale Deed dated November 27, 2013 in favour of the 3rd Respondent. Hence, the Revision Petitioner filed the Suit for declaration and other reliefs as stated *supra*.

5. During the pendency of the Suit, the Revision Petitioner filed I.A.No.17510 of 2015 under Order VI Rule 17 of the Code of Civil Procedure, 1908, seeking to amend the plaint incorporating the relief of recovery of possession. The Trial Court held that the proposed amendment does not contain any particulars as to the payment of Court Fee and the Petitioner filed the petition with a *malafide* intention. Accordingly, dismissed the petition.

6. Thereafter, the Revision Petitioner filed I.A.No.5285 of 2018 under Order VI Rule 17 of CPC, seeking declaration of title and to amend the prayer. The details of amendment reads thus:

“In paragraph 20, the prayer (d) being valued at Rs.5,00,000/- and pays a court fee of Rs.15,000/- under Section 25(a) of the Tamil Nadu Court Fee and Suit Valuation Act.



WEB COPY

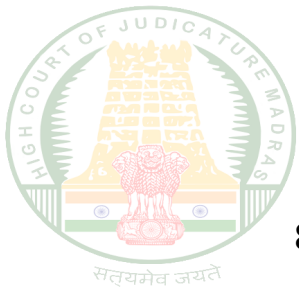


C.R.P.(PD)NO.4238 OF 2019

In paragraph 21, the prayer (d) to be deleted and to be incorporated with the following relief

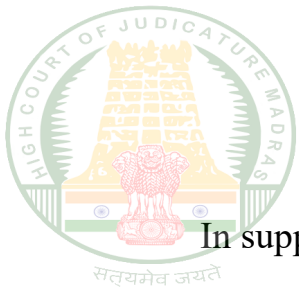
“To Declare that the plaintiff is the owner and title holder of the schedule mentioned property and consequently directing the third defendant to vacate and deliver the vacant possession of the property bearing Door No.8, Asirvathapuram 1st Street, Pulianthope, Chennai – 600 012, comprised in Re-Survey No.1735/281 part admeasuring an extent of 300sq.ft morefully described in the schedule hereunder”. ”

7.The Trial Court after hearing both sides, dismissed I.A.No.5285 of 2018 by holding that the amendment petition does not disclose the correct value of the Suit Property. The Suit Property is valued more than Rs.6,00,000/- (Rupees Six Lakhs Only) as per the guideline value and the Petitioner has intentionally given a lesser value of Rs.5,00,000/- (Rupees Five Lakhs only).



8. Feeling aggrieved by the Dismissal Order, the Revision Petitioner/Plaintiff has preferred this Civil Revision Petition.

9. Mr. L. Dhamodaran, learned Counsel appearing for the Revision Petitioner submitted that the Plaintiff filed a suit for declaration and other reliefs as stated in Paragraph No.21 of the Plaint. He further submitted that the amendment sought is a pre-trial amendment and has to be considered liberally. He further submitted that only in the year 2014, the Revision Petitioner came to know about the cancellation of Gift Settlement Deed, execution of Gift Settlement Deed in favour of 2nd respondent and the pursuant execution of Sale Deed in favour of the 3rd Respondent by 2nd respondent. Hence, the amendment sought for is not barred by limitation. The Trial Court erred in dismissing the Interlocutory Application by holding that the earlier application in I.A.No.17510 of 2015 was dismissed. The Trial Court did not consider the fact that I.A.No.17510 of 2015 was dismissed on technical grounds, i.e., for non-furnishing the correct particulars of the Court Fee. Hence, there is no bar to file a fresh application after complying with the defect in the earlier application. Accordingly, he prayed to allow this Civil Revision Petition.



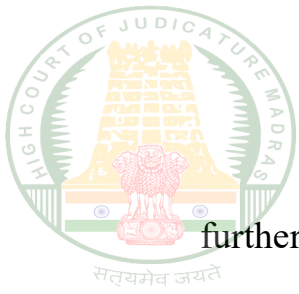
C.R.P.(PD)NO.4238 OF 2019

In support of his arguments, he relied upon the following Judgments of the

WEB COPY

Hon'ble Supreme Court and this Court: Abdul Rehman - vs - Mohd. Ruldu reported in 2012 (5) CTC 803; Revajeetu Builders and Developers - vs - Narayanaswamy and Sons reported in (2009) 10 SCC 84; Thiru Alankadu Immudi Ahora Dharma Sivachariar Aiyra Vaisya Madam - vs - Udumalpet Samayapuram Ayira Vaisya Sangam, rep. by its President reported in 2006-1-L.W.153; and Church of South India Trust Association, rep. by its Diocesan Treasure - vs - Kovil Pillai reported in (2008) 1 MLJ 291.

10. In response to the above arguments, Mr.N.Ganesh, learned Counsel appearing for the 3rd Respondent submitted that the Revision Petitioner filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 in I.A.No.17510 of 2015 and the same was dismissed. The Revision Petitioner once again filed a petition for the same relief in I.A.No.5285 of 2018 and the same was also dismissed on merits. Thus the subsequent petition in I.A.No.5285 of 2018 is barred by the principles of *res judicata*. He further submitted that the Revision Petitioner did not state the correct value with regard to Court Fee and jurisdiction. He



WEB COPY

further submitted that the market value would be more than Rs.5,00,000/-

(Rupees Five Lakhs Only). Further, the Revision Petitioner and the

Respondents 1 & 2 colluded and filed a Suit with a view to defeat and defraud the rights of the 3rd Respondent and to extract money if possible.

The amendment sought in the Plaint is clearly barred by limitation. After due consideration of the cumulative facts and circumstances, the Trial Court rightly dismissed I.A.No.5285 of 2018 and there is no need to interfere with the Order passed by the Trial Court. Accordingly, he prayed to dismiss the Civil Revision Petition.

11.This Court has considered both sides submissions and also perused the Plaint, Affidavit filed in support of I.A.No.5285 of 2018 and Affidavit filed in support of I.A.No.17510 of 2015 and other papers annexed in the typed set.

12.There is no dispute with regard to the relationship as stated above, i.e., the 1st Respondent is the mother, the Revision Petitioner and the 2nd Respondent are her son and daughter respectively. The 1st Respondent purchased an extent of 600 sq.ft. of land and building. She



WEB COPY

executed a Gift Settlement Deed on January 09, 2004 in respect of 300 sq.ft. (Eastern side) of land and the building thereon to the Revision Petitioner. The aforesaid 300 sq.ft. with the building is the Suit Property. According to the Revision Petitioner, the 1st respondent cancelled the Gift Settlement Deed dated January 09, 2004 and subsequently executed Gift Settlement Deed dated October 04, 2010 bequeathing the entire 600 sq.ft. in favour of 2nd respondent and pursuant to the Settlement Deed, the 2nd respondent executed a Sale Deed in favour of 3rd respondent on November 27, 2013. Hence, the Revision Petitioner filed a Suit with the prayer as stated *supra*. According to the plaintiff, the Suit is filed within three years from the date of knowledge. Hence, *prima facie* the suit is well within the period of limitation.

13.In the Plaint in Paragraph No.10, the Plaintiff has specifically stated that on July 14, 2014, the 3rd respondent came to the Suit Property along with her henchmen and broke open the lock and occupied one of the portions of the Suit Property by taking the law into her own hand. Hence, the Revision Petitioner filed a police complaint in this regard, and also filed I.A.No.17510 of 2015 seeking amendment to include the prayers as



C.R.P.(PD)NO.4238 OF 2019

to declaration and recovery of possession and the same was dismissed *inter alia* on technical grounds that the Court Fee and valuation of the relief sought were not properly mentioned.

14.Then the Revision Petitioner filed the present petition under Order VI Rule 17 of CPC for the same relief wherein he valued the relief sought to be included by amending the prayer at Rs.5,00,000/- (Rupees Five Lakhs).

15.This Court has perused Document No.6 i.e., the alleged Settlement Deed dated October 04, 2010 executed by the 1st respondent in favour of 2nd respondent wherein the Suit Property and adjacent Property, totalling 600 sq.ft. of land was valued at Rs.10,00,000/- (Rupees Ten Lakhs). Hence, the Suit Property 300 sq.ft (eastern side) valued at Rs.5,00,000/- (Rupees Five Lakhs) is *prima facie* valued correctly.

16.Admittedly, the trial has not commenced. The amendment sought for is a Pre-Suit amendment. The amendment does not change the character of the Suit or the cause of action. The Revision Petitioner



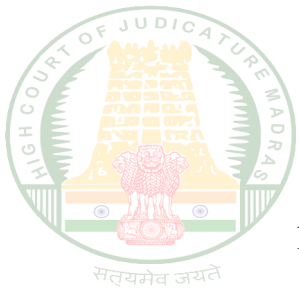
C.R.P.(PD)NO.4238 OF 2019

WEB COPY

already sought declaration of Cancellation of the Settlement Deed, the Settlement Deed allegedly executed by the 1st Respondent in favour of the 2nd Respondent and the Sale Deed allegedly executed by the 2nd Respondent in favour of the 3rd Respondent.

17. According to the Revision Petitioner, the 3rd Respondent entered into the Suit Property and hence, he wants to include the prayer for delivery of possession, which is a consequential one to the earlier reliefs sought for.

18. This Court perused the details of amendment mentioned in the present Order VI Rule 17 petition. Principles of *res judicata* is not applicable since the earlier application was dismissed on technical grounds of not furnishing the details of the valuation of Court Fee to be paid for the relief. It is settled law that the question of limitation is a mixed question of law and fact that can be gone through only after completion of trial. This Court does not find any infirmity in the amendment sought for. There is no dispute with regard to the legal position stated in the citations relied upon by either side.



C.R.P.(PD)NO.4238 OF 2019

WEB COPY

19. Considering the facts and circumstances of the case, with a view to decide the matter on merits, with a view to adhere to the principles of natural justice fully and in the interest of justice, this Court is inclined to allow the Civil Revision Petition.

20. Resultantly, this Civil Revision Petition is allowed and the Dismissal Order passed in I.A.No.5285 of 2018 is set aside and consequently, I.A.No.5285 of 2018 is allowed. Considering the facts and circumstances of the case, the parties shall bear their own cost. Consequently, connected Civil Miscellaneous Petition is closed.

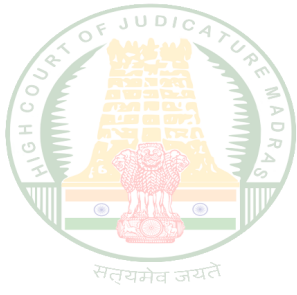
28 / 11 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
pam

To

The III Assistant Judge, City Civil Court,
Chennai.

Page No.13 of 14



WEB COPY



C.R.P.(PD)NO.4238 OF 2019

R. SAKTHIVEL, J.

pam

PRE-DELIVERY ORDER MADE IN
C.R.P.(PD)NO.4238 OF 2019

28 / 11 / 2025

Page No.14 of 14