

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4502 of 2014

and

M.P.No.1 of 2014

1.K.Thaiyanayagi
2.Gunaseelan Krishnasamy
3.K.Vasanthi
4.Geetha Nathan
5.Jayaraman Krishnasamy

.. Petitioners

Vs

M/s.Maxworth Home Limited,
Rep. By its Authorised Signatory,
No.50, Maxworth Nagar,
Sunnambu Kolathur,
Chennai - 600 017.

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 14.08.2014 made in I.A.No.194 of 2014 in O.S.No.147 of 2012 on the file of the Subordinate Court, Tambaram.

For Petitioners	: Mr.S.Parthasarathy Senior Counsel for Mr.S.Sivashanmugam
For Respondent	: Mr.R.Venkataraman Senior Counsel for Mr.G.Sundaram

ORDER

The Civil Revision Petition is filed against the order dated 14.08.2014 made in I.A.No.194 of 2014 in O.S.No.147 of 2012 on the file of the Subordinate Court, Tambaram.

2.The respondent as a plaintiff filed a suit in O.S.No.147 of 2012 for specific performance claiming the preemptive right directing the defendants to execute and register re-conveyance/sale deed in the name of the plaintiff and consequential injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property stating that both the plaintiff and the defendants entered into an agreement dated 29.01.1998. but the agreement has been cancelled. Hence, as per Clause 18 of the Agreement, the plaintiff had preemptive right to get the re-conveyance deed. Written Statement has been filed. During the trial, the defendants filed an application for rejection of the plaint on so many grounds including the limitation. The Trial Court after hearing both sides has dismissed the application. Against which, the present Civil Revision Petition has been filed by the petitioners/defendants.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

4. Learned counsel for the petitioners submitted that the Trial Court has wrongly held that the suit is not barred by limitation. That fact is not correct. He further submitted that preemptive right is for one year as per Article 97 of the Limitation Act and even for filing the suit for specific performance, three years from the date of cancellation as per Article 54 of the Limitation Act. But that factum was not considered by the Trial Court. Hence, he prayed for setting aside the order passed by the Trial Court.

5. Resisting the same, the learned counsel for the respondent would submit that as per Article 97, whether possession is with the plaintiff has to be decided only at the time of trial. He further submitted The question of limitation is the mixed question of law and fact and that can be decided only at the time of trial. Hence, he prayed for dismissal of the revision petition.

6. Considered the rival submissions made on both sides and perused the typed set of papers.

7. The respondent as a plaintiff filed a suit for specific performance

claiming the preemptive right directing the defendants to execute and register re-conveyance/sale deed in the name of the plaintiff and consequential injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property on the basis of the agreement dated 29.01.1998. Now, the point to be decided is whether the plaintiff is in possession, whether the plaintiff is entitled for specific performance of re-conveyance of the deed and whether the suit has been filed in time can be decided after letting oral and documentary evidence. At this juncture, it is appropriate to incorporate Article 97 of the Limitation Act, which is as follows:

	<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
97.	To enforce a right of pre-emption whether the right is founded on law or general usage or on special contract.	One year	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject-matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered.

8. But here in this case, in the plaint itself, the plaintiff sought for consequential relief of injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

During the trial only, it has to be decided as to who is in possession of the property and whether Article 97 of the Limitation Act is applicable? It is well settled dictum of the Hon'ble Apex Court that the question of limitation is the mixed question of law and fact and that can be decided only after letting oral and documentary evidence. So, I am of the view that it is a fit case for dismissing the revision with the direction to the Trial Court to decide the question of limitation without any influence by the earlier order passed by them after letting oral and documentary evidence.

9. In the result, the Civil Revision Petition is dismissed and the impugned order is hereby confirmed. The Trial Court is directed to dispose of the suit in O.S.No.147 of 2012 after framing necessary issues along with the issue of limitation and the Trial Court is also directed to dispose of the suit as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

10.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The Subordinate Court, Tambaram.

R.MALA. J.,

cse

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