

In the High Court of Judicature at Madras

Dated : 23.1.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Civil Revision Petition (PD) No.246 of 2015 and MP.No.1 of 2015

1.Nehru
2.Sellammal

...Petitioners

Vs

1.Babu (a) Sivasankar
2.Mrs.Kanakavalli
3.Velappan
4.Yogambhal
5.Bhavani

...Respondents

PETITION under Article 227 of The Constitution of India to set aside the fair and decretal orders dated 17.9.2014 made in I.A.No.11464 of 2014 in O.S.No.4239 of 2013 on the file of the Eighteenth Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.R.Thiagarajan

ORDER

The petitioners, who are the defendants 1 and 2 in a suit for declaration, have come up with the above civil revision petition, challenging an order dismissing their application for rejection of plaint under Order VII Rule 11 of the Civil Procedure Code.

2. Heard Mr.R.Thiagarajan, learned counsel for the petitioners.

3. The respondents herein filed a suit in O.S.No.4239 of 2013 on the file of the Eighteenth Assistant Judge, City Civil Court, Chennai, seeking a declaration that the settlement deed dated 4.5.2006 executed by the second defendant in favour of the first defendant was null and void and for the consequential relief of permanent injunction. The petitioners herein took a plea in the written statement that the suit is barred by the provisions of Section 4 of the Benami Transactions (Prohibition) Act, 1988. The petitioners/defendants also filed an application for rejection of plaint under Order VII Rule 11(d) contending that the suit is barred by limitation. But, the Court below dismissed the application holding that the suit is not barred by limitation. Aggrieved by the said order, the petitioners are before this Court.

4. In substance, the order of the Court below cannot be found fault with. The question of limitation is a mixed question of fact and law. The question as to whether Section 4 of the Benami Transactions (Prohibition) Act, 1988 is a bar, is also a mixed question of fact and law. Therefore, these two issues are to be adjudicated only on the basis of evidence at the time of trial and not in an application under Order VII Rule 11(d). To this extent, the Trial Court is right.

5. But, as rightly contended by Mr.R.Thiagarajan, learned counsel for the petitioners, the Trial Court has now held that the suit is not barred by limitation. Therefore, the learned counsel apprehends that the same impression may be carried through out the duration of the trial resulting in a

finding against the petitioners.

6. Hence, while dismissing the civil revision petition upholding the conclusion reached by the Trial Court, it is clarified that the findings with regard to the Benami Transactions (Prohibition) Act, 1988 and the plea of limitation, are only prima facie findings and that at the time of trial, the Trial Court will have to independently look into these issues on the basis of the evidence uninfluenced by the said findings.

23.1.2015

Internet : Yes

To
The Registrar, City Civil Court, Chennai.

RS

V.RAMASUBRAMANIAN,J
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