

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No. 2480 of 2014

And

M.P.No. 1 of 2014

1. Ravichandran
2. Rajeswari
3. Subramanian ... Petitioners

Versus

1. Nallusamy
2. N.Ramesh
3. N.Vijay ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned Principal District Munsif, Erode in I.A.No. 703 of 2013 in O.S.No. 350 of 2011 dated 25.02.2014.

For Petitioners : Mr. N.Ramesh

For Respondents : Mr.S.Kaithamalai Kumaran

O R D E R

The petitioners filed a suit for declaration. The respondents on the other hand filed a suit for mandatory injunction and permanent injunction. Subsequently, the respondents filed an application in I.A.No. 703 of 2013 for amendment of the plaint so as to challenge the sale deed executed in favour of the petitioners. The application was allowed by the trial Court. The said order is under challenge in this Civil Revision Petition.

2. The learned counsel for the petitioners contended that the petitioners purchased the property as early as on 23.06.2004. This fact was known to the respondents. Even then, they have neither filed a suit for cancellation of document nor a petition at the earliest point of time to amend the plaint. According to the learned counsel, the suit as on the date on which the amendment application was allowed was barred by limitation. This aspect was not considered by the trial Judge.

3. The learned counsel for the respondents justified the impugned order.

4. The respondents filed an application for amendment of the plaint so as to incorporate a prayer for declaration of nullity with regard to the sale deed in favour of the petitioners. The petitioners have taken up a contention that the very prayer is barred by limitation. There is no question of considering the question of limitation at the time of considering the application for amendment.

5. The question of limitation is a mixed question of fact and law and the same will be decided by the trial Court during the course of trial.

6. The learned trial Judge is directed to frame an issue as to whether the suit is barred by limitation and answer the said issue along with other issues.

7. It is open to the parties to adduce evidence to prove their respective contentions on all issues, including issue regarding limitation.

8. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

29.09.2016

vsg

To

Principal District Munsif, Erode.

K.K.SASIDHARAN. J.

vsg

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