

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.12.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE S.M.SUBRAMANIAM**

C.R.P.(P.D.) No.406 of 2014 and
M.P.No.1 of 2014

1. P.Vidya Bharathi
2. S.Kalai Devi
3. V.Geetha
4. V.Asha

...Petitioners

versus

1. N.Periyadurai
2. S.Devikarani

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order and Decreetal Order dated 20.11.2013 in I.A.No.18506/2012 in O.S.No.6371/2012 on the file of the III Additional Judge, City Civil Court, Chennai.

For Petitioners : Ms.AL.Gandhimathi

For 1st Respondent : Ms.B.Archana

for M/s.R.Manickavel

For 2nd respondent : Mr.M.Shanmugavel

ORDER

The present revision petition is filed challenging the order passed in I.A.No.18506/2012 in O.S.No.6371/2012 on 20.11.2013.

2. The learned Counsel appearing for the petitioner contends that the petitioners are the defendants 2 to 5 in the suit and the sale agreement between the petitioners/defendants 2 to 5 was entered into on 12.07.1999 regarding the sale of the property belongs to the respondents/plaintiffs. The sale price of the suit property was fixed at Rs.17,50,000/- on 12.07.1999 out of which Rs.3,00,000/- was received by way of advance and part-payment towards the sale consideration. After the sale agreement, there was no progress regarding the execution of the sale agreement and the parties had slept over the agreement for about 13 years. Thereafter, the respondents/plaintiffs issued a notice to the petitioners/defendants on 11.03.2012 and a reply was also received on 17.03.2012. Based on the above notice, the suit was filed seeking specific performance.

3. The I.A.No.18506/2012 was filed by the petitioner seeking rejection of the plaint. A counter affidavit was also filed by the

respondents in the petition in which also the respondents were unable to explain the delay. The trial court without considering these aspects dismissed the application on the ground that the minor's interest is involved in the suit and therefore, only after getting permission from the court in respect of minor's right, the sale agreement can be executed and therefore, the cause of action continues and accordingly, the plaint is maintainable.

4. The learned Counsel for the respondents opposed the revision petition on the ground that there is a clause in the agreement that the petitioners/defendants shall obtain court permission for the sale of the minor's interest in the suit property. Therefore, there is an undertaking given by the petitioners/defendants that necessary permission ought to have been obtained in respect of the minor's interest in the suit property. But the petitioners/defendants have not obtained any such permission and handed over any such court order to the respondents/plaintiffs and therefore, they were unable to proceed with the agreement and consequently filed the suit only after issuance of notice in the year 2012.

5. The rival arguments advanced both by the learned Counsel for the petitioners and the respondents are considered and this Court is of the opinion that even in the plaint, it is stated by the respondents that the plaintiffs were ready and willing to pay the balance sale consideration and complete the transaction even if the petitioners/defendants did not obtain any court permission. Further, the plaintiffs have admitted that they have obtained a legal opinion in this case that the minors do not have any interest and the defendants as the legal heirs are entitled to the suit property which is the subject matter of specific performance.

6. In view of the facts and circumstances, the respondents/plaintiffs are unable to explain the delay of 13 years in filing the suit before the trial court. Hence, the trial court has committed an error in not appreciating the basic fact regarding the delay of 13 years in filing the suit which cannot be excused and there is no convincing reply furnished by the plaintiffs during the presentation of the suit. Such being the facts and circumstances, this Court is inclined to consider the grounds of revision and accordingly, the order passed in I.A.No.18506/2012 in O.S.No.6371/2012 on 20.11.2013 is set aside

and the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.12.2016

Index:Yes/No
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To

III Additional Judge, City Civil Court, Chennai.

**S.M.SUBRAMANIAM, J.
tsi**

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