

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3260 of 2015 and

M.P.No.1 of 2015

M.Siva

...Petitioner

versus

1. Murugesan

2. Anbumani

3. Muthumanickam

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 13.03.2015 in I.A.No.491 of 2014 in O.S.No.120 of 2013 on the file of 3rd Additional District and Sessions Judge, Salem.

For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.T.S.Kanmani for R1 and R2
Mr.T.Murugamanickam for R3

ORDER

The petitioner filed a suit for partition in O.S.No.120 of 2013 before the learned 3rd Additional District Judge, Salem. The suit was contested by the respondents and more particularly the 3rd respondent, who was arrayed as 3rd defendant.

2. The 3rd respondent in his written statement took up a contention that the predecessor-in-interest of the petitioner entered into a sale agreement. Since there was no follow-up action taken by him to execute the sale deed, Civil Suit in O.S.No.35 of 1999 was filed for specific performance. The suit was decreed by the trial court and thereafter, property was delivered to him through court.

3. The petitioner taking into account the contention taken by the 3rd respondent in his written statement filed an application in I.A.No.491 of 2014 for amendment of the plaint. The petitioner sought additional relief of declaration that the sale is not binding on him. The application was opposed by the respondents by filing counter.

4. The Learned trial court Judge dismissed the application for two reasons, the first being on the ground of limitation and the second on the ground that it would alter the very nature of the suit already laid by the petitioner. The order is under challenge in this Civil Revision Petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

6. The suit in O.S.No.120 of 2013 was instituted by the petitioner

for partition without a statement to the effect that there was a suit in O.S.No.35 of 1999 for specific performance. According to the petitioner, it was only from the written statement filed by the 3rd respondent, he came to know that a decree was passed by the trial court in O.S.No.35 of 1999 pursuant to the suit filed by the 3rd respondent. The petitioner therefore filed an application for amendment.

7. The question of limitation was taken as a ground by the trial court to reject the application. The learned Trial Judge was of the view that the suit filed in the year 2013 challenging the sale deed made in favour of the 3rd respondent is barred by limitation. The learned Trial Judge was also of the view that by amending the plaint and incorporating a prayer for declaration, the very nature of the suit would get changed.

8. The question of limitation is a mixed question of law and fact, which would be decided at the time of trial. The 3rd respondent has taken up a contention that the petitioner was a party to the suit in O.S.No.35 of 1999 and even in the related execution petition. Those contentions would be dealt with by the trial court while deciding the suit in O.S.No.120 of 2013.

9. After hearing the parties at length and on a perusal of the order passed by the trial court, I am of the view that the trial court was not correct in dismissing the application on the grounds referred to above . The Impugned order is therefore liable to be set aside. Accordingly, the order dated 13.03.2015 is set aside. The Application in I.A.No.491 of 2014 is allowed.

10. The petitioner is given four weeks time for carrying out the amendment. The respondents are given four weeks time thereafter to file additional written statement. In case, an issue is taken by the respondents as to whether additional prayer is maintainable without challenging the decree passed in O.S.No.35 of 1999, necessarily an issue to that effect should also be framed by the trial court.

The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2016

Index:Yes/No
Internet: yes / No
ssd

K.K.SASIDHARAN, J.

ssd

To

The 3rd Additional District and Sessions Judge,
Salem.

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