

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.862 of 2016

1.Maili @ Mouli,  
W/o.Late Perumal

2.P.Ramakrishna,  
S/o.Late.Perumal

3.Kumaresan (Minor)  
S/o.Late Perumal

4.Kumaravelu (Minor)  
S/o.Late Perumal

3,4 minor of guardian mother and  
next friend 1)maili @ mouli  
All are residing at Irular Colony,  
Vumbalikam Patti Village,  
Kadaiyampatti PO, Omalau Taluk,  
Salem District.

... Petitioners

...Vs...

Shanmugam,  
S/o.Keravan,  
Irular Kottai Kattu Valavu,  
Thokkam Patti Post,  
Thadangam magira,  
Dharmampuri taluk,  
Dharmapuri District.

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.12.2015 made in I.A.No.38 of 2013 in O.S.No.238 of 2012 on the file of the Learned Sub-Judge, Dharmapuri.

For Petitioner : Mr.R.Dhinesh Kumar

**ORDER**

The defendants in the Original Suit O.S.No.238 of 2012 pending on the file of Sub-Court, Dharmapuri are the petitioners in the present Revision. The above said suit was filed by the respondent herein against the petitioners herein for the relief of specific performance based on an agreement for sale allegedly executed by M.Perumal, namely, the person from whom, the petitioners claim title in respect of the suit property, in favour of the respondent herein / plaintiff.

2. After service of summons, the respondents entered appearance and filed an application in I.A.No.38 of 2013 under Order VII Rule 11 CPC, praying for the rejection of the plaint. The learned Trial Judge, after hearing, dismissed the said application holding that no ground for rejection of the plaint was made out by the petitioners herein / defendants. The said order of the trial Court, dated 18.12.2015 is made the subject matter of challenge in the present Revision preferred under Article 227 of the Constitution of India.

3. The matter stands listed today for admission. The arguments advanced by Mr.R.Dhinesh Kumar, learned counsel for the petitioners are heard. The certified copy of the impugned order and the copies of the other documents produced in the form of typed set of papers are also perused.

4. According to the submission made by the learned counsel for the petitioners before this Court, the agreement stipulated a period of 3 years for the completion of the transaction and since the respondent / plaintiff did not make payment of the balance payment of sale consideration within the stipulated time, the suits for specific performance is not maintainable. Though not in direct language, but by necessary implication, the petitioners have chosen to contend that the suit for specific enforcement of the contract is barred by limitation. The question of limitation is a mixed question of law and fact, which has got to be tried and decided based on evidence. Furthermore, whether the conditions stipulated in the agreement regarding the time within which the transaction is to be completed is an essential condition of the contract or not pertains to the merits of the case and it does not affect the maintainability of the suit for specific performance.

5. When a period for performance is stipulated in the agreement for sale of immovable property, limitation starts from the date of expiry of the period thus stipulated in the agreement. The agreement was entered into on 26.11.2008. Three years period would have expired on 25.11.2011. Within 3 years from the said date, the suit came to be filed. Hence, on a cursory glance, this Court cannot accept the contention of the petitioners that the suit is barred by limitation. It is the further contention of the petitioners that since the original vendor under the agreement passed away on 16.10.2009, limitation would have start running from the said date.

6. This Court is not in a position to accept the above said contention. The petitioners/defendants, being the legal representatives of the deceased vendor under the agreement for sale, are bound by the agreement and they cannot contend that the agreement cannot be enforced against them after the death of the original vendor under the agreement and that the limitation for filing such a suit will start from the date of death of the original vendor.

7. For all the reasons sated above, this Court comes to the conclusion that there is no defect or infirmity in the order of the trial Court warranting interference by this Court in exercise of its power under Article 227 of the Constitution of India. The revision does not even merit admission and the same deserves dismissal at the threshold.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2016

Index: Yes/No

Internet: yes/No

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To

The Learned Sub-Judge, Dharmapuri.

P.R.SHIVAKUMAR.J

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