



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2016

CORAM:

WEB COPY

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.R.P (MD) No.2586 of 2016 (PD)
and
C.M.P (MD) No.12214 of 2016

A.S.ManiyamPetitioner/Petitioner/Defendant

Vs.

DevakumaranRespondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the Fair and Decretal order, dated 23.11.2016 passed in I.A.No.205 of 2016 in O.S.No.11 of 2008, on the file of III Additional District Judge, Tirunelveli.

For Petitioner : Mr. M.Vallinayagam
Senior Counsel
for Mr. D.Nallathambi
For Respondent : Mr. M.P.Senthil

ORDER

The petitioner has filed this Civil Revision Petition against the Fair and Decretal order, dated 23.11.2016, passed in I.A.No.205 of 2016 in O.S.No.11 of 2008, by the learned III Additional District Judge, Tirunelveli.

2.The petitioner is the defendant. The respondent is the plaintiff. The respondent filed suit in O.S.No.11 of 2008 before the District Court, Tirunelveli, for specific performance or in alternate to refund the advance amount. The petitioner entered appearance through Advocate and filed the written statement and contested the suit. P.W.1 was examined in chief. The learned counsel appearing for the defendant/petitioner took time for cross-examination of P.W.1 and subsequently, he reported no instruction. P.Ws.2 & 3 were also examined. An ex-parte decree was passed on 8.03.2013. Subsequently, I.A.No.101 of 2016 was filed to set aside the ex-parte decree and the said application was allowed on 30.08.2016. The suit was posted for cross-examination of the witness. At that stage, the petitioner filed I.A.No.205 of 2016 for rejection of plaint on the ground that suit is barred by limitation.

3.The respondent filed counter and submitted that subsequent to the agreement of sale on 05.04.2003, the petitioner received further amount and acknowledged the same in the agreement of sale and



therefore, the suit is not barred by limitation and prayed for dismissal of the said application.

4.The learned Trial Judge considering the averments made in the affidavit and counter affidavit and the materials available on record and judgment relied on by both parties, dismissed the application holding that the question of limitation is a mixed question of fact and law and the same can be decided only after considering the evidence in trial.

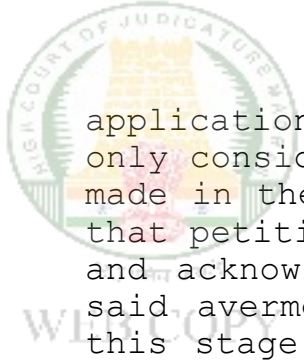
5.Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

6.The learned Senior Counsel appearing for the petitioner submitted that the learned Trial Judge erred in dismissing the application on the ground that question of limitation is a mixed question of fact and law. In the present case, a reading of the plaint shows that the suit is clearly barred by limitation. He further submitted that the respondent has not explained how the suit is filed in time. The respondent failed to comply with the provisions of Order 7 Rule 6 CPC. In support of his case, the learned Senior Counsel relied on the Judgment reported in **AIR 1934 (PC) 208 (Kalyan Mal v. Ahmad Uddin Khan and another)**. Similarly, as per Sections 18 and 19 of Limitation Act, the respondent failed to prove the alleged acknowledgment by the petitioner. To substantiate his claim, the learned Senior Counsel relied on the judgment reported in **AIR (29) 1942 Madras 353 Kannepalli Chinna Venkata Chelamiah Sastri v. Meduru Annapoornamma and another**.

7.The learned counsel for the respondent/caveator submitted that the petitioner, after agreement of sale, received further amount and acknowledged the same in the agreement of sale. The respondent has mentioned the acknowledgment in the plaint. A suit cannot be rejected on the ground of limitation, without evidence being let in and prayed for dismissal of the Civil Revision Petition.

8.I have heard the learned Senior Counsel appearing for the petitioner and the respondent and also perused the entire materials on record and judgement relied on by learned Senior Counsel for Petitioner.

9.The respondent filed a suit on 04.06.2007 and the same has been numbered as O.S.No.11 of 2008. The petitioner entered appearance and filed the written statement and contested the suit. Subsequently, he remained ex-parte. Ex-parte decree was passed on 8.3.2013. On application filed by the petitioner by the order, dated 30.8.2016 the ex-parte decree was set aside. When the suit is posted for cross-examination of witness, the petitioner has come out with the present petition to reject the plaint. The learned Trial Judge has rightly held that question of limitation can be decided only after letting in evidence by the parties. For considering



application under Order 7 Rule 11 C.P.C., for rejection of plaint, only consideration that Court can take into account is the averments made in the plaint. The respondent has made averments in the plaint that petitioner received amounts subsequent to the agreement of sale and acknowledged the same. It is for the respondent to prove the said averments by acceptable evidence. The court cannot decide at this stage whether such averments with regard to acknowledgment is true or not.

10.It is well settled that the suit cannot be rejected on the ground of limitation and can be decided only after considering the evidence let in by the parties. In the circumstances, the judgment relied on by the learned Senior Counsel appearing for the petitioner are not applicable to the facts of the present case, at this stage. The learned Trial Judge has exercised his jurisdiction in proper perspective and has given cogent and valid reason for dismissing the application. There is no illegality or irregularity warranting interference by this Court.

12.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The III Additional District Judge, Tirunelveli.

+1cc to Mr. M.P. Senthil, Advocate, SR. No.83284

+1cc to Mr. D.Nallathambi Advocate, SR. No.83070

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MSK/MM/25.01.2017/3P-4C

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