

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

C.R.P.(PD) No.1220 of 2017

M.Shenbagavalli

.. Petitioner

..VS..

1.S.Ramasamy

2.S.Murugesan

3.The Commissioner
Corporation of Chennai
(Zone 12)
(Formerly Alandur Municipality)
Ripon Building, Chennai-600 003.

4.The District Collector
Kancheepuram District
Kancheepuram.

5.The Managing Director,
Chennai Metropolitan Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 600 002.

6.The Asst. Engineer,
TNEB, Nanganallur,
Chennai - 600 061.

7.The Secretary to Government,
Government of Tamil Nadu,

Civil Supplies and Consumer Protection Dept.
Fort St. George,
Chennai - 600 009.

8.The Sub-Registrar,
Alandur of Nanganallur,
In Shopping Complex,
Nanganallur Co-Op Building Society,
12 First Main Road,
Nanganallur, Chennai - 600 061.

9.The Inspector General of Registration,
120, Santhome High Road,
Chennai - 600 028.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of rejection of plaint dated 17/2/2015 in O.S.SR No. 15267/2014 (a suit for specific performance under Order VII Rule 11 of CPC by the learned Additional District Munsif at Aalandur in Kancheepuram District.

For Petitioners : Mr.S.Veerabahu

ORDER

Lone plaintiff in the trial Court is the lone revision petitioner before me.

2.Plaint was not taken on file and not numbered. Plaint was filed on the file of the Subordinate Judge's Court at Tambaram vide O.S.SR.No.15267 of 2014 dated 20.08.2014. A perusal of the plaint shows that it is a suit for

specific performance.

3. Suit for specific performance has been filed based on an agreement of sale dated 02.02.1994.

4. Therefore, a specific performance suit for specifically enforcing an agreement of sale dated 02.02.1994 was filed two decades later on 20.08.2014.

5. The purported agreement for sale, on which the suit is predicated, has been filed as plaint document No.1 along with the suit.

6. Learned trial Judge, took up the plaint at the unnumbered stage and examined the plaint qua maintainability.

7. After so examining, the learned trial Judge rejected the plaint in and by an order dated 17.02.2015 inter alia holding that the plaint is hopelessly barred by limitation. Besides this, learned trial Judge has also held that none of the ingredients for specific performance suit are present in the instant case as is evident from the plaint averments.

8. Aggrieved, the lone plaintiff has preferred the instant civil revision petition calling in question the above said order of the trial Court dated

17.02.2015.

9. Heard the learned counsel for the revision petitioner.

10. Learned counsel for the revision petitioner would contend that the plaintiff is a single women, who is not very literate and therefore, a very liberal view of the matter has to be taken up. This was the primary submission made by the learned counsel for the petitioner.

11. Be that as it may, to a specific query from the Court as to what is the time frame for performance stipulated under the agreement of sale dated 02.02.1994, learned counsel for the petitioner drew my attention to the plaint averments contained in paragraph No.6. Learned counsel also took me through the cause of action paragraph in the plaint, which is paragraph No.8 in the plaint.

12. A perusal of the entire avements contained in paragraph Nos.6 and 8 of the plaint placed before me would reveal that there is no mention of the time frame in the agreement of sale. There is no mention about as to how the suit is brought within the ambit of limitation prescribed for specific performance suits.

13. Faced with such a situation, learned counsel for the petitioner

placed four case laws before me. Learned counsel for the petitioner pressed into service four case laws in an attempt to say that limitation cannot be set up as a ground for rejection under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (hereinafter referred as 'C.P.C.' for brevity) and also to say that a liberal approach should be adopted.

14. With regard to the limitation being raised as a point for rejection under Order VII Rule 11(d) of the C.P.C., **(2006) 5 SCC 662 (Balasaria Construction (P) Ltd. Versus Hanuman Seva Trust and others)** was placed before me. My attention was drawn to paragraph No.6, wherein there is a reference to a larger bench.

15. It may not be necessary to go into this aspect of the matter further as limitation is not the only ground on which the plaint has been rejected. Learned trial Judge has also clearly observed that other essential ingredients such as readiness and willingness, besides limitation, are also not fulfilled qua plaint averments. Learned Judge after thorough perusal of the plaint, has held that there is no cause of action (live), particularly, in the light of paragraph No.8 of the plaint and I have no reason to disagree with the findings rendered by the learned trial Judge.

16. Thereafter, learned counsel for the revision petitioner pressed into service three other case laws and they are as follows:

(i) 2005 (4) CTC 255 (Tarachand (deceased) and others v. Kathija);

(ii) 2007 (2) CTC 58 (The Secretary, Madras Race Club, Chennai v. Saraswathy Kailasam);

(iii) AIR 2012 SC 1629 (Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai);

The above three case laws were pressed to service by the learned counsel for the petitioner to buttress his submission that a liberal view has to be taken qua limitation. A perusal of the factual matrix of the above three other case laws would reveal that they arise out of matters dealing with Section 5 of the Limitation Act. Therefore, the above said case laws do not help the case of the revision petitioner in any manner.

17. Owing to all that have been stated supra, there is no merit in the civil revision petition.

18. The order of the trial Court dated 17.02.2015 rejecting the plaint filed twenty years later (on 20.08.2014) for specific performance based on a

purported agreement for sale dated 02.02.1994 is in order. The Civil Revision Petition stands dismissed. There shall be no order as to costs.

04.04.2017

Index:Yes/No

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To

The Additional District Munsif
at Aalandur in Kancheepuram District.

M.SUNDAR, J.

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