

In the High Court of Judicature at Madras

Dated : 24.4.2017

Coram :

The Honourable Ms.Justice V.M.VELUMANI

Civil Revision Petition (PD) No.1505 of 2017 & CMP.No.7011 of 2017

1.Usha Kalyani
2.G.N.Ravi
3.N.Sundharavadanam
4.Mrs.Malliga
5.Mrs.T.Vasuki
6.Mrs.R.Padmavathi
7.Mrs.Prabavathi
8.Mrs.Lakshmi
9.G.N.Prakash
10.N.Kanniappan
11.N.Selvarajan
12.S.Sairam
13.P.L.Panchatsharam
14.Mr.V.Raju
15.Mr.M.Subramanian
16.Mrs.Uma Pandian

...Petitioners

Vs

1.S.Jenanatha Pandian
2.A.S.Muthuswamy
3.Mrs.Brinda Muthuswamy
4.Mrs.Kalpagam Ravi
5.Miss.Sai Prarthana
6.A.S.Anantharaman
7.A.S.Chandrakala
8.Mrs.A.A.Lakshmi
9.Mrs.A.A.Alamelu
10.Miss.A.A.Vasuda
11.G.N.Pandian
12.Mrs.A.S.Kameswari
13.S.Sriram
14.S.Sridhar

...Respondents

PETITION under Article 227 of The Constitution of India against the fair and decretal order dated 28.11.2016 made in I.A.No.11296 of 2006 in O.S.No.567 of 2006 on the file of the Fifth Assistant Judge, FA/c II Assistant Judge, City Civil Court, Chennai.

For Petitioners :

: Mr.S.Thankasivan

For Respondent-1/[caveator](#) : M/s.Shah and Shah

ORDER

The above civil revision petition has been filed against the order passed by the learned Trial Judge dated 28.11.2016 in I.A.No.11296 of 2006 in O.S.No.567 of 2006.

2. The first respondent is the plaintiff and respondents 2 to 14 and the petitioners herein are the defendants in the suit. The first respondent/plaintiff filed the said suit for the following reliefs :

"(a) for a declaration declaring that the sale deeds registered as document Nos.3480 to 3494 of 1995 and 3522 to 3531 of 1995 dated 13.11.1995 on the file of the SRO, Anna Nagar, Chennai in favour of defendants 11 to 25 executed by the 10th defendant on behalf of the defendants 1 to 9 as they are sham, non est, null and void, since they are contravening the provisions of the laws of the land and

(b) consequently grant permanent injunction restraining all the defendants, their men, agents or servants or anybody claiming either under or through them in any way alienating or encumbering in any manner the suit property and

(c) to pay the costs of the suit."

3. In the said suit, the petitioners herein filed I.A.No.11296 of 2006 under Order VII Rule 11 of the Civil Procedure Code to reject the plaint on the ground that the plaint does not disclose any cause of action and on a reading of the plaint, it clearly shows that the suit is barred by limitation, that the first respondent/plaintiff has not valued the suit properly and therefore, has not paid the correct court fee. According to the petitioners, the 10th defendant, as a power of attorney agent of defendants 1 to 9, executed the sale deeds dated 13.11.1995 in favour of the petitioners and from that date onwards, the petitioners are in possession and enjoyment of the property.

4. The first respondent/plaintiff filed a counter and opposed the said application by submitting that the first defendant/second respondent herein executed a power of attorney in favour of the first respondent/plaintiff and also executed an agreement of sale in his favour and from that date onwards, the first respondent/plaintiff has invested huge amount. According to the first respondent/plaintiff, the contention of the petitioners that the suit does not disclose any cause of action and is barred by limitation, is contrary to facts. It is the further contention of the first respondent/plaintiff that in paragraphs 35 and 37(1) of the plaint, the first respondent/plaintiff disclosed the cause of action and that the suit has been filed after noticing the publication issued by the defendants on 05.1.2006, calling for objections, as fraud has been played by the defendants.

5. The learned Trial Judge, after considering the averments mentioned in the plaint, affidavit in I.A.No.11296 of 2006, counter affidavit and the contention of the first respondent/plaintiff that the defendants played a fraud, dismissed the application holding that a reading of the plaint shows cause of action, that the suit has been properly valued, that the first respondent/plaintiff paid the correct court fee as per Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, that the suit is not barred by limitation, as the first respondent/plaintiff alleged fraud and that the question of limitation is a mixed question of law and fact, which can be decided only after appreciating the evidence let in by the parties. Against the order of the learned Trial Judge, the above civil revision petition has been filed.

6. Heard the learned counsel for the petitioners and the learned counsel for the first respondent/caveator.

7. The main contentions raised by the learned counsel for the petitioners in the affidavit filed in support of I.A.No.11296 of 2006 as well as in the grounds of revision

are not tenable. The application for rejection of the plaint can be considered only based on the averments made in the plaint and the documents filed by the plaintiff. In the instant case, the first respondent/plaintiff alleged as to the fraud committed by the defendants and therefore, the question of limitation can be decided only by appreciating the evidence let in by the parties. Further, in the plaint, the first respondent/plaintiff averred indicating the cause of action for filing the suit. The learned Trial Judge had also taken note of the fact that the first respondent/ plaintiff valued the suit properly and paid correct court fee. Therefore, the contention of the petitioners that the plaint does not disclose any cause of action, cannot be accepted and the question of limitation can be decided only by appreciating the evidence let in by the parties. By giving cogent and valid reasons, the learned Trial Judge dismissed the application while exercising the power conferred on him. Hence, there is no illegality or infirmity in the order passed by the learned Trial Judge warranting interference.

8. In the result, the above civil revision petition is dismissed. No costs. Consequently, the connected CMP is also dismissed.

9. The suit is of the year 2006 and the application for rejection of the plaint was dismissed in the year 2016. In such circumstances, the defendants are directed to file their written statement within two weeks from the date of receipt of a copy of this order. The learned Trial Judge is, in turn, directed to dispose of the suit as expeditiously as possible and in any event, not later than 30.9.2017.

24.4.2017

RS

V.M.VELUMANI,J

RS

Internet : Yes

To
The Registrar, City Civil Court, Chennai.

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<http://www.judis.nic.in>