

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1545 of 2017
and C.M.P.No.7178 of 2017

Senthilkumaran

.. Petitioner

Vs.

1.Lakshmipathy
2.Kaliyamoorthi
S/o.Rengarajulu

3.Kaliyamurthy
S/o.Narashimalu

4.Radhakrishnan

Vitto Bai (died)

5.Susila
6.Santhanakrishnan
7.Mohan Raj
8.Muralidharan
9.Vasanthi
10.Hemalatha
Respondents

..

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 03.03.2017 made in I.A.No.118 of 2017 in O.S.No.190 of 2011 on the file of the learned Additional District Munsif, Chidambaram.

For Petitioner : Mr.A.Muthukumar

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 03.03.2017 made in I.A.No.118 of 2017 in O.S.No.190 of 2011 on the file of the learned Additional District Munsif, Chidambaram.

2. The petitioner is third party to the suit. The first respondent is the plaintiff and respondents 2 to 10 are the defendants 1 to 10 in O.S.No.190 of 2011. First respondent had originally filed the said suit against the second respondent for declaration, mandatory injunction and for recovery of possession. The second respondent filed written statement in the month of February 2012 and is contesting the suit. From the averments made in the written statement filed by the second respondent, first respondent impleaded the respondents 3 to 10 as defendants 2 to 10 in the suit. Third defendant filed written statement in the month of January 2017. The trial commenced and the first respondent filed proof affidavit and marked documents. The suit was posted for cross-examination of P.W.1. At this stage, the

petitioner/third party filed I.A.No.118 of 2017 for impleading himself as 11th defendant in O.S.No.190 of 2011.

3. According to the petitioner, first respondent entered into an agreement of sale dated 30.09.2001 agreeing to sell the suit property for total sale consideration of Rs.10,000/-, first respondent received a sum of Rs.1,000/- as an advance and handed over the possession to the petitioner. The petitioner has put up R.C.C. terraced building in the suit property and is residing there. Suppressing these facts, the first respondent filed the suit without impleading the petitioner as defendant in the suit.

4. The first respondent filed counter and denying all the averments mentioned in the affidavit, prayed for dismissal of the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and the three documents filed by the petitioner, dismissed the application holding that the petitioner is the son of second respondent, only at the instigation of the second respondent, the petitioner has filed

the present application to drag on the proceedings and the documents filed by the petitioner do not disclose that the possession was handed over to him by the first respondent.

6. Against which, the present civil revision petition is preferred by the petitioner/third party.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. The grievance of the petitioner is that the first respondent entered into an agreement of sale dated 30.09.2001 with the petitioner agreeing to sell the property for a total sale consideration of Rs.10,000/-. The first respondent received a sum of Rs.1,000/- as an advance and handed over the possession of the suit property to the petitioner. In view of the above facts, the petitioner is a necessary and proper party and the learned Judge failed to properly consider these facts.

9. Learned counsel for the petitioner in support of his contention relied on the judgment reported in **(2002) 3 SCC 676**

in (Shrimant Shamrao Suryavanshi and another v. Pralhad Bhairoba Suryavanshi (dead) by legal heirs and others), in para-17 to 20, it is held as follows:

“17. We are, therefore, of the opinion that if the conditions enumerated above are complied with, the law of limitation does not come in the way of a defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract has barred by limitation.

18. The matter may be examined from another angle. The established rule of limitation is that law of limitation is not applicable to a plea taken in defence unless expressly a provision is made in the statute. The law of limitation applies to the suits and applications. The various articles of the Limitation Act show that they do not apply to a defence taken by a defendant in a suit. Thus, the law of limitation bars only an action in a court of law. In fact, what the Limitation Act does is, to take away the remedy of a plaintiff to enforce his rights by bringing an action in a court of law, but it does not place any restriction to a defendant to put forward any defence though such defence as a claim made by him may be barred by limitation

and cannot be enforced in a court of law. On the said principle, a defendant in a suit can put forward any defence though such defence may not be enforceable in a court of law, being barred by limitation.

19. In *M.K. Venkatachari vs. L.A.R. Arunachalam Pillai* (AIR 1967 Madras 410), it was held, thus:

"that the defence to limitation is a creature of positive law and therefore cannot be extended to cases which do not strictly fall within the enactment. It is an established canon of construction of the law of limitation not to enlarge the scope of statutory provisions of limitation by analogy or logic".

20. It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part-performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action. "

10. From the order passed by the learned Judge, it is seen

that the petitioner has not proved the documents 2 and 3 viz., house tax receipt and Aadhar card are related to the suit property. The petitioner is the son of the second respondent and it is unbelievable that he was not aware of the suit filed by the first respondent till the commencement of trial. Further, agreement of sale is dated 30.09.2001, which is barred by limitation.

11. In the circumstances, the contention of the learned counsel for the petitioner is that the petitioner is an agreement holder, he is in possession and enjoyment of the suit property and hence, he is a proper and necessary party to the suit, is untenable.

12. It is pertinent to note that the agreement of sale is dated 30.09.2001. The first respondent filed the suit against the father of the petitioner in the year 2011. But the petitioner has not taken any steps to get the sale deed executed within three years from the date of agreement of sale. He filed the present application only when his father entered appearance in the suit and is contesting the same. In such circumstances, contention of the first respondent that at the instigation of the second respondent, petitioner has filed the present application only to drag on the

proceedings, after commencement of trial, has considerable force. Therefore, the judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case as the first respondent has not filed the suit against petitioner. In the nature of relief sought for by first respondent, petitioner is not a proper or necessary party to the suit.

13. In view of the above facts and circumstances of the case, the learned Judge considering all these facts dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity in the order passed by the learned Judge dated 03.03.2017 warranting interference by this Court.

14. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

28.04.2017

Index : Yes
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To

The Additional District Munsif,
Chidambaram.

V.M.VELUMANI, J.

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