

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1629 of 2017
& C.M.P.No.7705 of 2017

Kathiravan

.. Petitioner

Vs.

1.K.Vishnu
2.Jayamani
3.Vaithinya
4.K.Jothimani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.01.2017 made in I.A.No.494 of 2016 in O.S.No.426 of 2012 on the file of the learned I Additional Subordinate Judge, Erode.

For Petitioner : Mr.G.Pavendhan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 11.01.2017 made in I.A.No.494 of 2016 in O.S.No.426 of 2012 on the file of the learned I Additional Subordinate Judge, Erode.

2.The petitioner is the second defendant, respondents 1 to 3 are the plaintiffs and fourth respondent is the first defendant in O.S.No.426 of 2012 on the file of the I Additional Subordinate Court, Erode, for declaring that the deeds are null and void and for permanent injunction.

3. The petitioner earlier filed O.S.No.519 of 2011 on the file of the District Munsif Court, Erode, for permanent injunction against the respondents 1 and 2. On filing the petition, the suit filed by the petitioner was transferred to the file of I Additional Subordinate Court, Erode and re-numbered as O.S.No.184 of 2013 and both the suits are tried jointly. The respondents 1 to 3 are letting in evidence and closed their side evidence. The fourth respondent was examined as D.W.1. The petitioner was examined as D.W.2 and he marked certain documents. The suit is pending for cross examination by the respondents 1 to 3.

4. At that stage, the petitioner filed I.A.No.494 of 2016 for determine the issue of law i.e., whether the suit in O.S.No.426 of 2012 is barred by limitation and the said issue to be decided as

preliminary issue. According to the petitioner, the respondents 1 to 3 are intentionally delaying the cross examination of the petitioner.

5. The respondents 1 to 3 filed counter affidavit denying the averments made in the application and stated that all the issues are to be decided together. The question of limitation is a mixed question of fact and law and it can be decided only by appreciating oral and documentary evidence let in during trial.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, 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 appreciation of evidence let in by both the parties.

7. Against the order of dismissal dated 11.01.2017 made in I.A.No.494 of 2016, the present civil revision petition is filed by the petitioner/second defendant.

8. Heard the learned counsel for the petitioners and perused the materials available on record.

9. The grievance of the petitioner is that the respondents 1 to 3 are deliberately delaying the cross examination of D.W.1. The respondents 1 to 3 are seeking declaration of documents executed during October 2009 as null and void. The suit in O.S.No.426 of 2012 is filed in the month of December 2012 which clearly shows that the said suit is barred by limitation. Therefore, the issue of limitation is not mixed question of fact and law and it has to be decided as preliminary issue.

10. The above said contention of the learned counsel appearing for the petitioner is untenable and is devoid of merits.

11. It is seen from the materials available on record that the trial in both the suits started and respondents 1 to 3 let in evidence and closed their side evidence. The petitioner was examined as D.W.2 and the fourth respondent was examined as D.W.1. The suit is pending for cross examination of D.W.1. At that stage, the petitioner filed an application for deciding the issue of limitation as preliminary issue. After commencement of trial, completion of evidence of respondents 1 to 3 and when the suit is pending for cross examination of D.W.1, the said application is filed at the

belated stage and it is not maintainable after commencement of trial.

12. The petitioner contended that the cross-examination of D.W.1 is unnecessarily delayed and the suit is adjourned to number of hearings for cross examination of D.W.1.

13. In view of the above facts, the learned Judge dismissed the application by giving cogent and valid reasons. Therefore, there is no illegality or irregularity warranting interference by this Court with the order of the learned Trial Judge dated 11.01.2017.

14. In the result, this Civil Revision Petition is dismissed. The learned Subordinate Judge, Erode, is directed to dispose O.S.No.426 of 2012 on merits and in accordance with law, as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2017

Index : Yes/No
dm/kj

V.M.VELUMANI, J.

dm/kj

To

The I Additional Subordinate Judge,
Erode.

C.R.P.(PD)No.1629 of 2017
& C.M.P.No.7705 of 2017

06.06.2017

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