

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1968 of 2017
& C.M.P.No.9505 of 2017

Nagarajan

.. Petitioner

Vs.

V.K.Palanivelu

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 17.04.2017 made in I.A.No.149 of 2017 in O.S.No.56 of 2011 on the file of the Principal District Munsif, Ulundurpet.

For Petitioner : Mr.R.Thiagarajan

ORDER

This Civil Revision Petition has been filed against the order and decretal order dated 17.04.2017 made in I.A.No.149 of 2017 in O.S.No.56 of 2011 on the file of the Principal District Munsif, Ulundurpet.

2. The petitioner is the third defendant and the respondent is the plaintiff in O.S.No.56 of 2011. The respondent filed suit for

declaration and for permanent injunction. The learned counsel appearing for the petitioner submitted that the present petitioner filed a memo adopting the written statement filed by the defendants 1 and 2. After framing issues, trial commenced. At that stage, the petitioner filed I.A.No.149 of 2017 under Order 7 Rule 11(a) & (d) of C.P.C. to reject the plaint.

3. According to the petitioner, the suit filed by the respondent is barred by limitation and there is no cause of action for filing the suit.

4. The respondent filed counter on 23.3.2017 and opposed the said application.

5. The learned Judge considering the averments made in the plaint, affidavit, counter affidavit, materials available on record and the Judgements relied on by both the learned counsel for the petitioner and respondent, dismissed application.

6. Against the said dismissal order dated 17.04.2017 made in I.A.No.149 of 2017, the present civil revision petition is filed.

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

8. From the records it is seen that the respondent has filed the suit for declaration and permanent injunction stating that the plaintiff / respondent is in possession and enjoyment of the suit property and defendants are trying to interfere with his possession and enjoyment of the property.

9. According to the respondent, the cause of action arose on 15.01.2011 when the 1st defendant tried to interfere with his possession and he filed suit on 24.02.2011 within the limitation period of three years. This averment can be decided only after appreciating the evidence let in during trial. The question of limitation is a mixed question of law and that cannot be decided in the application filed under Order 7 Rule 11 of CPC. It is well settled that to decide an application filed under Order 7 Rule 11 of CPC, to reject the plaint, the averments in the plaint and documents filed along with the plaint are only criteria to decide the application not the written statement and documents relied on by defendant or averments in the affidavit filed in support of application filed to reject the plaint.

10. In view of the above reasons, the learned Judge considering all the materials available on record rightly dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 17.04.2017.

11. In the result, this Civil Revision Petition is dismissed. Since the suit is of the year 2011, the learned Principal District Munsif, Ulundurpet is directed to dispose of the suit in O.S.No.56 of 2011 as expeditiously as possible, in any event, not later than six months from the date of receipt of a copy of this order without being influenced by the order passed in I.A.No.149 of 2017 dated 17.04.2017. No costs. Consequently, connected miscellaneous petition is closed.

21.06.2017

Speaking Order/Non-speaking Order
Index : Yes/No
av / ssd

To

The Principal District Munsif,
Ulundurpet.

V.M.VELUMANI, J.

av/ssd

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