

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.303 of 2017
and
C.M.P.No.1400 of 2017

The East West Foundation of India,
Represented by its Administrative Officer,
S.Subramanian

.. Petitioner

Vs.

Ramachandran

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.06.2014 passed in I.A.No.180 of 2011 in O.S.No.147 of 2010 on the file of the Sub-Court, Madurantakam.

For petitioner : Mr.S.J.Jagadev

ORDER

The sixth defendant's application under Order 7 Rule 11 CPC was dismissed, which is challenged in this revision.

2. The respondent/plaintiff has filed the suit for specific performance based on agreement dated 21.05.2007 through Power of Attorney of the defendants 1 to 5. While so, the sixth defendant, which is an educational

and charitable institution, has purchased the suit property from the defendants 1 to 5 for a valid consideration under sale deed, dated 24.12.2007. It is alleged that the plaintiff has knowledge about this transaction, but yet, has come up with a false case suppressing the real facts. Therefore, the application under Order 7 Rule 11 CPC is filed. The said application, after contest, was dismissed.

3. The endeavour of the revision petitioner/sixth defendant is that there is no cause of action for the respondent/plaintiff to file the suit, as the plaintiff has not added the Power of Attorney as a party, from whom he has purchased the property. Secondly, the suit is filed only in the year 2010, which is clearly barred by limitation. The trial Court, after discussing the facts in detail and considering the arguments advanced by both sides, has dismissed the application holding that there is cause of action for filing the suit and the question of limitation is a mixed question of fact and law and the same has to be tried only in the suit. However, there is an observation by the learned trial Judge in the impugned order that the suit has been filed within the period of limitation, which the learned counsel seeks to expunge. Application under Order 7 Rule 11 CPC can be decided only based on the plaint averments and the Court need not even look into the written statement or any other document that might have been filed along with the plaint. When the question of limitation is a mixed question of law and fact,

the learned trial Judge has stated that the suit is filed within time. However, it is made clear that at the time of arguments and even while deciding the suit on merits, the said finding of the trial Court regarding the filing of the suit within time, shall not come in the way. The trial Court is directed to frame specific issue on the question of limitation and decide the same.

4. With the above observations and direction, the Civil Revision Petition is disposed of. No costs. C.M.P. is closed.

03.02.2017

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Copy to

The Sub-Judge,
Madurantakam.

PUSHPA SATHYANARAYANA, J

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