

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD).No.3929 of 2017

and

C.M.P.No.18359 of 2017

A.Jamal

.... Petitioner

- Vs -

1.M/s.Shriram Transport Finance Company Ltd.,
Represented by its Branch Manager,
Mr.J.Vivekanandan
Mookambika Complex 3rd Floor,
No.4, Lady Desika Road,
Mylapore, Chennai-600 004.

2. Mr.G.Ramachandran

3. Mr.Munusamy

4. The Sub-Registrar
Old No.43, New No.150,
Cemetery Road,
Old Washermenpet,
Chennai-600 021.

... Respondents

Prayer : Writ Petition filed under Article 227 of the Constitution of India
against the fair and decretal order dated 18.09.2017 passed in
I.A.No.879 of 2017 in O.S.No.3636 of 2016 on the file of the VI Assistant

Judge, City Civil Court, Chennai in dismissing the petition to Reject the plaint.

For Petitioner : Mr.B.Manivannan

ORDER

According to the learned counsel for the petitioner, the 1st respondent/plaintiff has filed a suit for declaration that the sale deed dated 27.03.2014 executed by the 1st defendant in favour of the 2nd defendant vide document No.957 of 2014 is null and void, not binding on the plaintiff and liable to be set aside. According to the revision petitioner the 1st defendant availed loan from the plaintiff and had created an equitable mortgage in respect of the suit property by depositing the title deeds with them. The 1st defendant had availed loan and defaulted in repayment. The 1st respondent/plaintiff has not filed the suit for recovery of money as against the 1st defendant. Further, the plaintiff ought to have filed suit before November 2015 which is within three years from the date of hypothecation agreement. Therefore, this suit clearly barred by the Act. Hence, the revision petitioner has filed the present application under Order 7 Rule 11 CPC. The 1st respondent/plaintiff has filed counter stating that they have denied the contention of the petitioner and contended that they are triable issues and therefore, plaint cannot be rejected.

2. By considering the submission made by the parties, the court below has held that the period of limitation for an equitable mortgage had not yet come to an end. The relevant cause of action has been disclosed in the plaint. Therefore, the provision under Section 34 of Specific Relief Act are not attracted. Further, rejecting the contention of the petitioner the suit is barred by limitation. Challenging the aforesaid order, the petitioner has filed the present revision petition before this Court.

3. The learned counsel for the petitioner would submit that under Section 34 of the Specific Relief Act, would apply to the case on hand. The plaintiff Company has prayed for recovery of money, the Specific Relief Act would attract and the same is barred under the law. The said fact has been considered at the time of trial. Therefore, at this stage, this issue cannot be decided under Order 7 Rule 11 C.P.C., and therefore, the petitioners can agitate this issue before the trial court at the time of trial. Therefore, there is no warrant to interfere with the order passed by the trial court and the trial court is directed to decide the objection made in the petition independently without being influenced by any observation made in this petition.

D.KRISHNAKUMAR, J.,

ssn

4. Accordingly, the civil revision petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

06.11.2017

Intex:Yes/No
Speaking order/Non-speaking order
ssn

To

1. VI Assistant Judge,
City Civil Court, Chennai.

2. The Sub-Registrar
Old No.43, New No.150,
Cemetery Road,
Old Washermenpet,
Chennai-600 021.



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