

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

C O R A M

THE HONOURABLE Mrs.JUSTICE **PUSHPA SATHYANARAYANA**

C.R.P.P.D.No.403 of 2017
and C.M.P.No.1857 of 2017

K.Chinnasamy

.. Petitioner

-Vs.-

1. R.L.Nandhini
2. Giriammal
3. Rangaraj

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 27.06.2016 made in I.A.No.811 of 2013 in O.S.No.638 of 2010 on the file of the learned Principal Sub Court, Coimbatore.

For petitioner ... Mr.N.Manokaran

O R D E R

The third defendant is the revision petitioner. Challenging the order dismissing an application filed under Order VII Rule 11 C.P.C. in a suit for specific performance, the present revision has been filed.

2. According to the revision petitioner, the present suit filed in O.S.No.638 of 2010 is false, frivolous and vexatious. It is further contended that the present suit is barred under Order 2 Rule 2 C.P.C

and also barred by limitation. It is the contention of the revision petitioner, earlier the first respondent/plaintiff filed a suit seeking permanent injunction from alienating or encumbering the suit scheduled property by the defendants. Pending the said suit, the plaintiff also had filed I.A.No.72 of 2008 seeking permission of the court to file a comprehensive suit seeking specific performance, which was allowed by the Court below. According to the revision petitioner, he was not given an opportunity to oppose the said application. Hence, the plaintiff filing the present suit without seeking permission of this Court under Order 2 Rule 2 C.P.C, is liable to be rejected. Accordingly, he would pray for setting aside the order passed by the court below.

3. Heard the learned counsel for the petitioner.

4. From the perusal of the order passed by the Court below, it is seen that in I.A.No.72 of 2008 in O.S.No.134 of 2007, leave was granted to the first respondent / plaintiff to file a comprehensive suit seeking specific performance as earlier only a prayer for injunction was sought for by the plaintiff. In the plaint averments also, it has been specifically stated by the plaintiff that she has obtained permission from the court for filing a comprehensive suit. Further, the court

below has also stated that the suit has to be filed on or before 13.02.2009 and the present suit has been filed on 12.01.2009, which was admitted by the revision petitioner herein in his affidavit and therefore, the same is not barred by limitation.

5. In such circumstances, the present suit filed by the first respondent/plaintiff is certainly maintainable and not barred by limitation. Further, the order dated 11.12.2008 passed in I.A.No.72 of 2008 in O.S.No.134 of 2007 permitting the first respondent/plaintiff to file a comprehensive suit was not challenged. Whether the said order itself is right or wrong, has to be decided only in the suit and the same cannot be decided in the application filed by the third defendant/revision petitioner under Order VII Rule 11 C.P.C. Therefore, the learned trial Judge has rightly dismissed the application, which does not warrant any interference by this Court.

4. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.02.2017

srn

PUSHPA SATHYANARAYANA.J

srn

To

The Principal Sub Judge,
Coimbatore.

C.R.P.P.D.No.403 of 2017
and C.M.P.No.1857 of 2017

14.02.2017

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