

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM

The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)No.1214 of 2012

and

M.P.No.1 of 2012

Kumaravel

...Petitioner

Vs

1. Ravindran
2. Ramasamy
3. Manimalar Nithiagam
4. Malarmagal Finance
5. Nachimuthu
6. Palaniyandi
7. Palaniammal
8. Periasamy
9. Karuppannan
- 10.Nallusamy
- 11.Matheswari
- 12 Arunkumar
- 13.Gowthami
- 14.Nallammal

...Respondents

Prayer :-

Civil Revision Petition, filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 27.02.2012, made in I.A.No.6 of 2012, in O.S.No.179 of 2001, on the file of the Additional Subordinate Judge, Namakkal.

For Petitioner : Mr.N.C.Ashok kumar for
Mr.I.Abrar Mohamed Abdullah
For Respondents : Mr.T.Dhanyakumar

ORDER

The respondents 1 and 2 initially filed a suit for redemption. The suit was contested by the petitioner, by filing written statement.

2. The respondents 1 and 2, long after the filing of the written statement by the petitioner, filed an application in I.A.No.6 of 2012, for amendment of the prayer.

3. The respondents 1 and 2 wanted the prayer to be amended for incorporating the prayer for declaration that the sale deed executed in favour of the fourth defendant was null and void. The application was opposed by

the petitioner, by filing counter affidavit, wherein, a contention was taken that the prayer for setting aside the sale is barred by limitation. The learned trial Judge, notwithstanding the said objection, allowed the application with an observation that the question of limitation is a mixed question of fact and law, and the same could be decided during the course of trial. The said order is under challenge in this Civil Revision Petition.

4. The learned counsel appearing on behalf of the petitioner, by placing reliance on the decision of the Hon'ble Supreme Court, reported in **(2014) 4 S.C.C. 516 (Voltas Ltd., Vs. Rolta India Ltd.,)** submitted that the Court has to see as to whether the relief is barred as on the date on which, the application for amendment was filed.

5. I have also heard the learned counsel for the respondents 1 and 2.

6. The respondents 1 and 2 in the plaint, in O.S.No.179 of 2001, made a reference about the sale deed executed by the defendants 1 and 2 in favour of the fourth defendant. The respondents 1 and 2 indicated that, it is not necessary to set aside the sale, and they are satisfied with the relief of

redemption.

7. There is a clear indication in the plaint filed on 24.11.2001 with regard to the sale executed by the defendants 1 and 2 in favour of the fourth defendant. The application for amendment was filed only on 21.12.2011. In case, the statement in the plaint is taken, it is apparent that the prayer for setting aside the sale was made only after a period of three years.

8. The learned trial Judge was expected to consider the entire matter in the light of the counter filed by the petitioner to arrive at a conclusion that the petition for amendment of the prayer is maintainable at that point of time. Since no such attempt was taken, I am of the view that the matter requires fresh consideration.

9. In the result, the order, dated 27.02.2012. is set aside. The application in I.A.No.6 of 2012, is restored to file. The learned trial Judge is directed to consider the application afresh, in the light of the counter affidavit filed by the petitioner and pass appropriate orders. Such exercise shall be completed within a period of eight weeks from the date of receipt of

a copy of this order.

10. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

25.04.2017

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Index : Yes/No

To

The Additional Subordinate Judge,
Namakkal.

K.K.Sasidharan,J.,

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