

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.06.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**

CRP(PD)No.1714 of 2018

and

C.M.P.No.9395 of 2018

Mr.Jagadish

.. Petitioner

vs.

1.A.Rajagopalan

2.Mrs.Padmavathy Ammal

3.Mrs.Balathilagam

4.Mr.A.Sridharan

5.Mrs.Vimala

6.Mrs.Kothadevi

7.Mr.Govardhan

8.Mr.A.Badrinarayanan

9.Mr.A.Vijayaraghavan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 22.02.2018 passed in I.A.No.129

of 2016 in O.S.No.165 of 2013 by the learned District and Sessions Judge, Thiruvallur.

For Petitioner

... Mr.V.P.Raman

ORDER

The Civil Revision Petition has been filed by the petitioner to set aside the order dated 22.02.2018 passed in I.A.No.129 of 2016 in O.S.No.165 of 2013 by the learned District and Sessions Judge, Thiruvallur.

2. The petitioner herein is the 9th defendant and the respondents herein are the plaintiff and defendants 1 to 8 in the suit filed in O.S.No.165 of 2013.

3. The brief facts of the case are as follows:

The first respondent / plaintiff filed a suit in O.S.No.165 of 2013 against the petitioner and respondents 2 to 8 seeking for partition and separate possession on the file of the Principal District Court, Thiruvallur. Pending the suit, the petitioner/9th defendant filed I.A.No.129 of 2016 under Order 7 Rule 11(a) & (d) of CPC to reject the plaint and the same was dismissed on 22.02.2018. Feeling aggrieved by the said order, the present civil revision petition has been filed.

4. The learned counsel for the petitioner/9th defendant submitted that the first respondent/plaintiff has not challenged the validity of the registered settlement deed, which was executed in favour of the petitioner under Document No.2653 of 2001 dated 10.10.2001. Moreover, the first respondent failed to disclose the cause of action for the suit filed before the trial Court. Further, the plaintiff filed the suit in the year 2013, i.e after a period of 12 years. Hence, the suit is barred by limitation and the same is not maintainable. Therefore, the learned counsel prayed to set aside the impugned order passed by the trial Court and reject the plaint.

5. In support of his submission, the learned counsel for the petitioner/9th defendant relied on the decision in **MD. NOORUL HODA vs. BIBI RAIFUNNISA AND OTHERS (1996 [7] SCC 767)**, wherein paragraph No.6 reads as follows:

"The question, therefore, is as to whether Article 59 or Article 113 of the Schedule to the Act is applicable to the facts in this case. Article 59 of the Schedule to the Limitation Act, 1908 had provided inter alia for suits to set aside decree obtain by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary Article 120 in Schedule III was

attracted. The present [Article 59](#) of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, [Article 59](#) would be applicable to any suit to set aside a decree either on fraud or any other ground. It is true that [Art. 59](#) would be applicable if a person affected is a party to a decree or an instrument or a contract. There is no dispute that [Article 59](#) would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether [Article 59](#) gets attracted? As stated earlier, [Article 59](#) is a general provision. In a suit to set aside or cancel an instrument, a contract or a decree on the ground of fraud, [Article 59](#) is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the

plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass a person seeking derivative title from his seller. It would therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first become known to him. "

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

7. On a perusal of records it is seen that the first respondent filed a suit in O.S.No.165 of 2013 for partition and separate possession against the petitioner and the respondents 2 to 9. It is further seen that the first respondent/plaintiff has not challenged the settlement deed dated 10.10.2001 bearing Document No.2653 of 2001 executed in favour of the petitioner/9th defendant. The Court below, rightly dismissed the application filed by the petitioner/9th defendant on the ground that the law of limitation of the suit cannot be decided at this stage, when the suit is in part heard stage and is pending for defendants' side witness, it is not possible to decide the case by considering the plea raised in the written statement or to any evidence.

8. It is well settled proposition of law that at the time of deciding the application under Order 7 Rule 11 CPC, whatever the defence taken by the defendants in the written statement need not be looked into and the Court has to look into only the averments made in the plaint and the documents annexed with the plaint and decide as to whether any cause of action has been made out or not and barred by law at this stage. The plea of limitation is a mixed question of facts and law that can be decided only after recording evidence and not at this stage. Therefore, there is no merit in the application and there is

no illegality or infirmity in the order passed by the Court below. Moreover, the decision **(cited supra)** relied on by the learned counsel for the petitioner is not applicable to the facts of the case on hand. Hence, this Court is inclined to dismiss the civil revision petition.

In view of the above, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

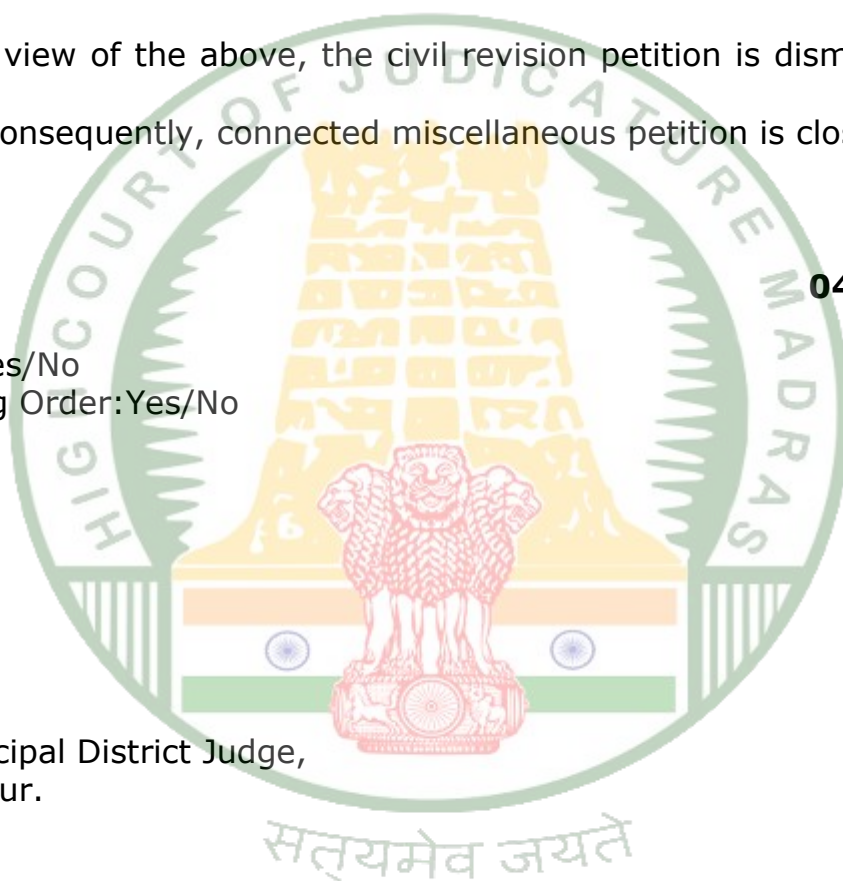
04.06.2018

Index:Yes/No
Speaking Order:Yes/No

cla

To

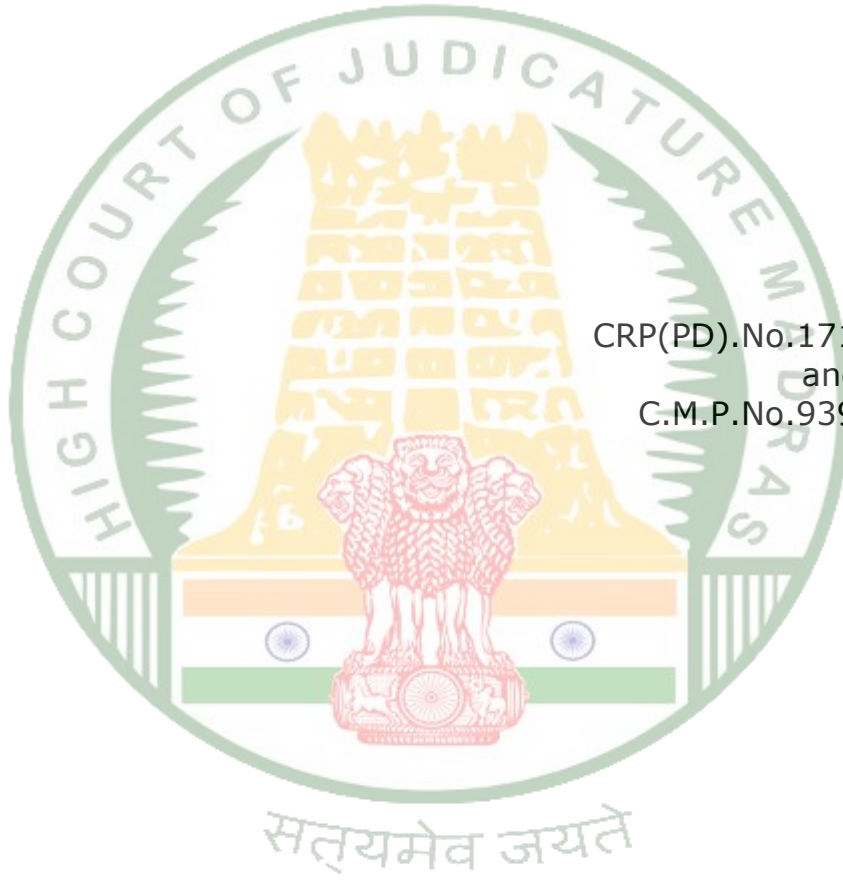
The Principal District Judge,
Thiruvallur.



WEB COPY

P.VELMURUGAN.J,

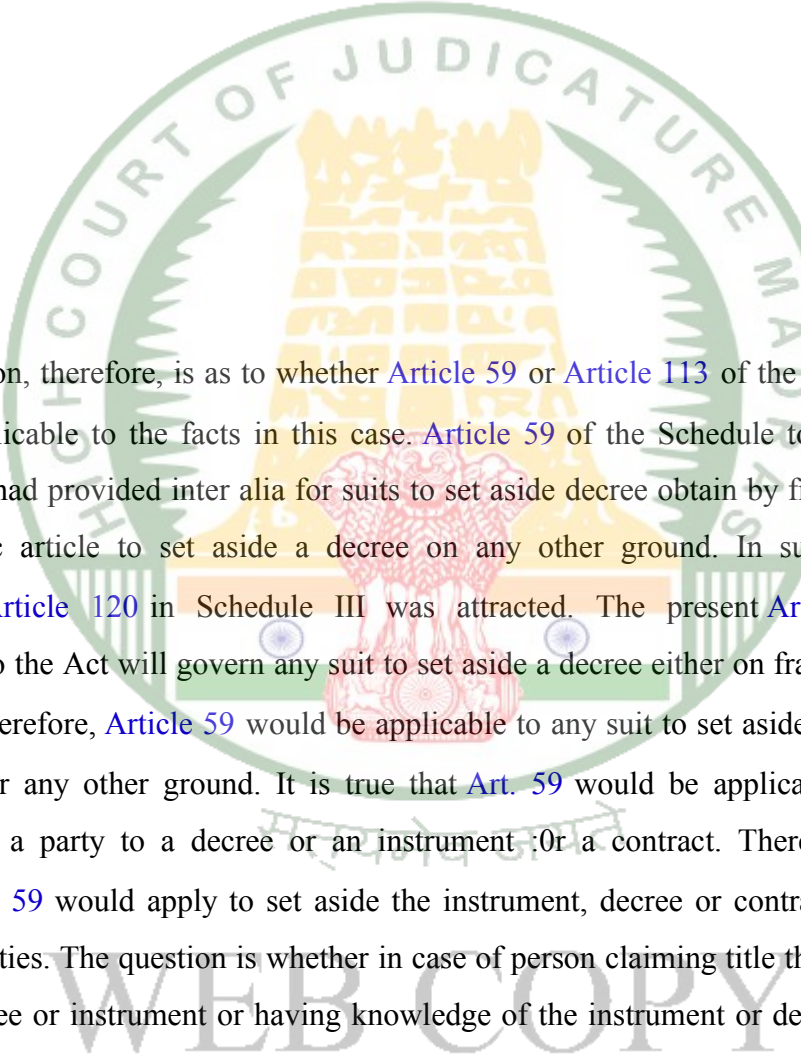
cla



CRP(PD).No.1714 of 2018
and
C.M.P.No.9395 of 2018

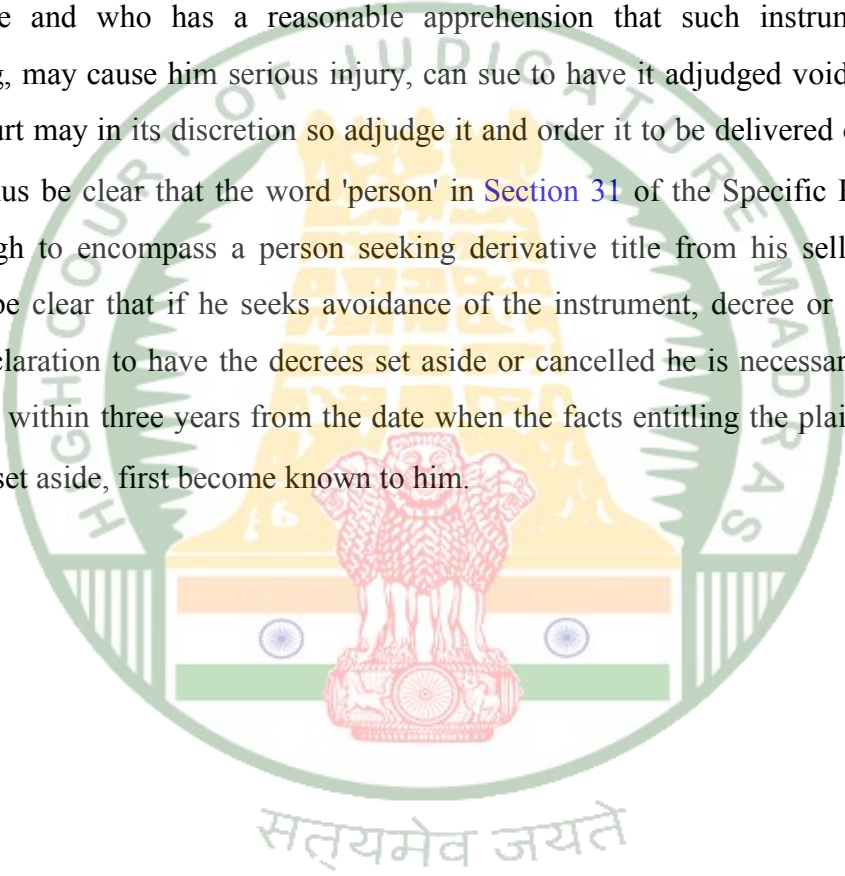
WEB COPY

04.06.2018



The question, therefore, is as to whether [Article 59](#) or [Article 113](#) of the Schedule to the Act is applicable to the facts in this case. [Article 59](#) of the Schedule to the [Limitation Act](#), 1908 had provided inter alia for suits to set aside decree obtain by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary [Article 120](#) in Schedule III was attracted. The present [Article 59](#) of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, [Article 59](#) would be applicable to any suit to set aside a decree either on fraud or any other ground. It is true that [Art. 59](#) would be applicable if a person affected is a party to a decree or an instrument or a contract. There is no dispute that [Article 59](#) would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether [Article 59](#) gets attracted? As stated earlier, [Article 59](#) is a general provision. In a suit to set aside or cancel an instrument, a contract or a decree on the ground of fraud, [Article 59](#) is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the

plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. [Section 31](#) of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in [Section 31](#) of the Specific Relief Act is wide enough to encompass a person seeking derivative title from his seller. It would therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first become known to him.



WEB COPY