

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP(PD).No. 3153 of 2017 and
C.M.P.No.14803 of 2017

T. Gajendran

... Petitioner

Vs.

T. Amsa Ammal

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-out the plaint filed in O.S.No.2301 of 2017 on the file of the XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.M. Sridhar
For Respondent : Mr.J. Sudhakaran

O R D E R

The respondent is the mother of the revision petitioner. The respondent filed the suit in O.S.No.4691 of 2015 against her son, the revision petitioner for bare injunction not to disturb the plaintiff's peaceful possession and enjoyment of the property and also stated that alleged settlement deed dated 03.04.2006 is sham and nominal and she is in absolute possession and enjoyment of the suit property. The revision petitioner has filed a Writ Petition in W.P.No.23256 of 2015 challenging the unilateral cancellation of the settlement deed. During pendency of the above said writ petition, the respondent filed another suit in O.S.No.2301 of 2017 on the file of the XVII Additional City Civil Court, Chennai to declare that the settlement deed dated 03.04.2006 as null and void, since the revision petitioner has filed the writ petition for unilateral cancellation of settlement deed as null and void. Therefore, she has filed the subsequent suit for declaration of settlement deed as null and void. During the pendency of the said suit in O.S.No.2301 of 2017, the revision petitioner has filed the present revision petition to reject the plaint on the ground that the second suit is hit by Order II Rule 2 CPC by saying that when the respondent filed the first suit on that day itself and the cause of action for the second suit had already accrued. Therefore, without seeking the relief of declaration of the settlement deed dated 03.04.2006 as null and void in the earlier suit, now, without leave of the Court, she cannot file a separate suit for

declaration of settlement deed executed on 03.04.2006 as null and void, further the relief sought for in the original suit of the year 2017, were also barred by limitation.

2. The learned counsel for the petitioner would submit that since the respondent herein is the mother of the revision petitioner, she has executed the settlement deed dated 03.04.2006. Subsequently, she has filed the suit in O.S.No.4691 of 2016 for bare injunction and she has also filed the suit in O.S.No.2301 of 2017 on the file of the XVII Additional City Civil Court, Chennai for declaring that the settlement deed executed by the plaintiff, in favour of the respondent, as null and void. Therefore, he has filed the present revision before this Court to reject the plaint on the following two reasons:

(i) It is submitted that the suit filed in O.S.No.2301 of 2017 devoid on merits, law and facts, and also barred by law of limitation. The plaintiff cannot challenge the settlement deed which was executed by her in the year 2006 and the same was fraudulently cancelled by her in the year 2009 itself. But the suit challenging the settlement deed came to be filed only in the year 2017 nearly 11 years later which is clearly prohibited by limitation.

(ii) Besides, the above suit is also hit by order II Rule 2 of CPC. The salutary principle behind Order II Rule 2 is that a defendant or defendants should not be vexed time and again for the same cause by splitting the claim and the reliefs for being indicated in successive litigations. It is, therefore, provided that the plaintiff must not abandon any part of the claim without the leave of the Court and must claim the whole relief or entire bundle of reliefs available to him/her in respect of that very same cause of action and she/he would thereafter be precluded from so doing in any subsequent litigation that the plaintiff may commence if she has not obtained the prior permission of the Court. In the present case, the plaintiff failed to reserve her right to seek further claim, hence, the present suit is indeed has no legal sanctity.

3. Now, since the cause of action already accrued, when the first suit was filed in O.S.No.4691 of 2016. The said suit

is still pending, without the leave of the Court, she has filed the present suit in O.S.No.2301 of 2017 on the file of the XVII Additional City Civil Court, Chennai. Since she is party to the settlement deed, she has to file suit within three years from the date of execution of the settlement deed. She cannot unilaterally cancel the settlement deed. Therefore, he filed writ petition the same is pending. Hence, the order passed by the Trial Judge warrants interference.

4. The learned counsel for the respondent/plaintiff would submit that suit in O.S.No.4691 of 2015 was filed because the settlement deed was not acted upon and the respondent herein is absolute possession and enjoyment of the property. Since the petitioner herein tried to dispose her, therefore she filed suit for bare injunction. She also cancelled the settlement deed by registered deed. The revision petitioner filed the writ petition in W.P.No.2301 of 2017 against the respondent and the Sub-Registrar. Till date, the writ petition is pending in which he has also challenged the cancellation of the settlement deed on the ground that it is the unilateral cancellation without notice.

5. Therefore, the respondent filed the present suit in O.S.No.2301 of 2017 to declare the settlement deed dated 03.04.2006 as null and void. The respondent was in possession of the suit property and the settlement deed never acted upon therefore, she did not file suit for declaration. Since, the petitioner has filed the writ petition separately to quash the cancellation deed. Cause of action accrued for the respondent to file the present suit. However, both the suits are pending, writ is also pending, whether suit is hit by Order 2 Rule 2 CPC and it is barred by limitation, are to be decided after trial and not at this stage. Since she filed the suit for bare injunction not to disturb the plaintiff's peaceful possession and enjoyment of the property. As already stated, the matter has to be decided after recording of evidence, during the trial. Now, he has filed the application to strike out the plaint by invoking Article 227 of the Constitution of India. The Apex Court and this Court time and again has held that Article 227 has to be exercised sparingly. It is not an automatic one, when the petitioner filed the writ petition before this Court and the same is pending. One writ petition was filed before this Court by invoking Article 226, which is pending till now. Whether the subsequent suit filed by the respondent is hit by order 2 Rule 2 CPC or it is barred by limitation, cannot be decided by exercising power under Article 227 of Constitution of India especially when the petitioner has got alternative remedy. This is not the fit case to exercise the superintendence over the Subordinate Courts. Therefore, this revision petition is dismissed.

6. In fine, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

msm/klt

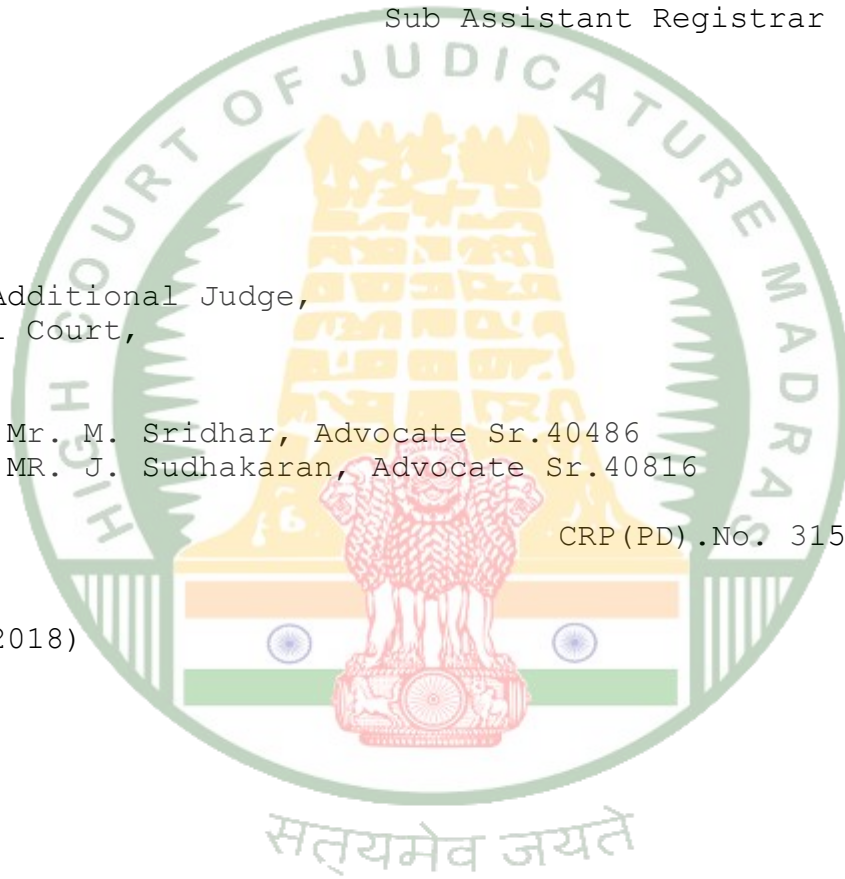
To

The XVII Additional Judge,
City Civil Court,
Chennai.

+ 1 cc to Mr. M. Sridhar, Advocate Sr.40486
+ 1 cc to MR. J. Sudhakaran, Advocate Sr.40816

CRP(PD).No. 3153 of 2017

SS(CO)
EU(03/08/2018)



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