

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.04.2018

CORAM

The Hon'ble Mr.Justice **P.VELMURUGAN**CRP(PD).No.3215 of 2017 &
C.M.P.No.15061 of 2017

Mohan Sha

.. Petitioner

vs.

- 1.Bala Saraswathi Bai @ Chinni Bai
- 2.Lakshmi Narayana Sha
- 3.Ganesh Kumar Sha
- 4.Vathsala Bai
- 5.V.Saraswathi Bai
- 6.Alli Bai

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the impugned the fair and decretal orders dated 18.04.2017 in I.A.No.335 of 2016 in O.S.No.47 of 2011 on the file of the learned III Additional District Judge, Puducherry and allow the petition in I.A.No.335 of 2016 in O.S.No.47 of 2011.

For Petitioner

...Ms.L.Lakshmi Swaroopa

For Respondents

...No Appearance

ORDER

The Civil Revision Petition has been filed by the plaintiff/petitioner against the order passed by the trail Court in

I.A.No.335 of 2016 in O.S.No.47 of 2011 on the file of the learned III Additional District Judge, Puducherry.

2. The contention of the revision petitioner is that, he has filed a suit in O.S.No.47 of 2011 seeking to pass a Preliminary Decree in respect of his share in the suit property and to deliver the possession. In that suit in I.A.No.335 of 2016 was filed by the petitioner/plaintiff to amend the prayer in the suit for declaration declaring that alleged and purported sale deed dated 30.03.2009 in Document No.4178 of 2009 is Void ab-initio and Non-est in eye of law and in any event not binding on plaintiff in any manner for any purpose.

3. The trial Court, after considering the facts and circumstances of the case, dismissed the said application on 18.04.2017 on the ground that the relief sought for by the petitioner is barred by limitation. Aggrieved against the order of dismissal passed by the trial Court in I.A.No.335 of 2016 in O.S.No.47 of 2011, this revision petition has been preferred by the petitioner/plaintiff.

4. The learned counsel for the petitioner mainly contended that the respondents have filed their written statement in the year of 2013.

After framing of issues, the case was posted for trial and the plaintiff evidence was closed on 23.03.2015. Since the first defendant had raised specific plea in his written statement and additional written statement that Kuppammal bai had executed settlement deed in favour of the respondents 1 and 2, it is necessary to seek for declaration declaring that the said settlement is void and not binding on the plaintiff. Further, he submitted that the trial Court has failed to note that the amendment cannot be denied, merely on the basis of limitation. The amendment if allowed, would not cause any prejudice or injustice to the respondents.

5. Heard the learned counsel appearing for the petitioner. Even though sufficient opportunity has been given to the respondents, they have not appeared either in person or through their counsel. This Court perused the materials on record.

6. On a perusal of the records, it is seen that the written statement was filed in the year 2013. While so, since the petitioner is party to the documents, the petitioner within three years from the date of the execution of the documents ought to have sought for the relief of declaration but in the present case the relief of declaration in

respect of the disputed settlement deed has been sought by the petitioner only on 28.03.2016. This Court is of the view that the relief sought for by the petitioner is barred by limitation. Therefore, there is no illegality or infirmity in order passed by the trial Court.

7. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

03.04.2018

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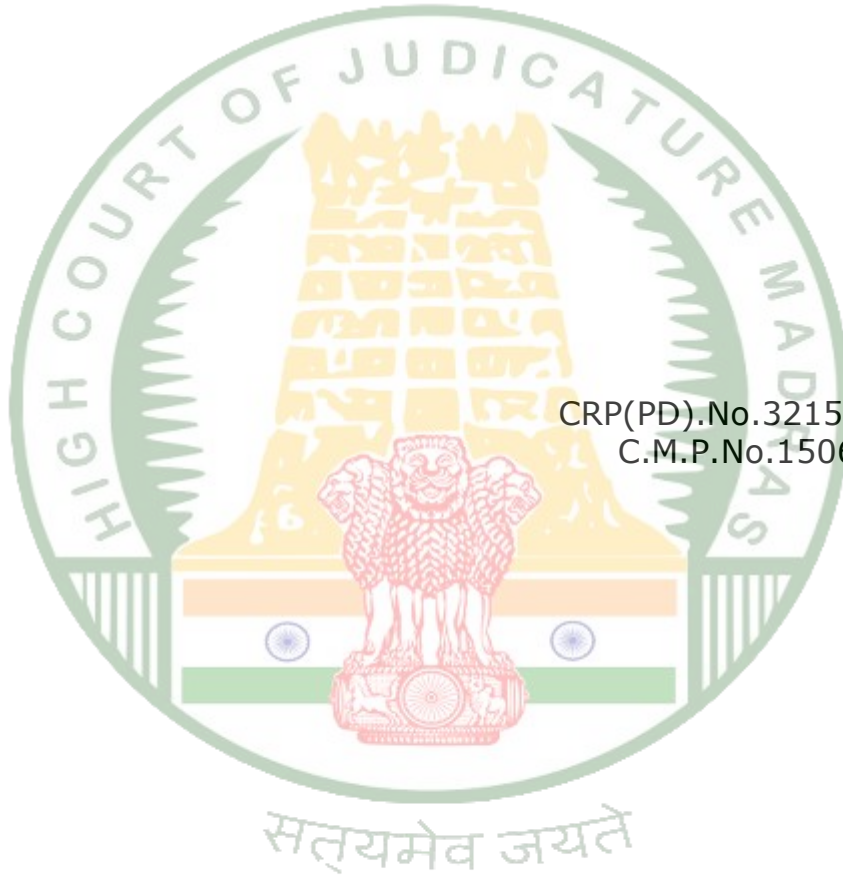
To

The learned III Additional District Judge,
Puducherry.



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P.VELMURUGAN.J,



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