

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.397 of 2015
& M.P.Nos.1 & 2 of 2015

Imran Khan

... Petitioner

Vs.

- 1.S.Gnanamurugan
- 2.S.Dhandapani
- 3.Ahmed Sheriff
- 4.Rashidha Gaffar Khan

- 5.The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai – 04.

- 6.The Sub Registrar,
Sub Registrar Office,
Adyar, Chennai – 20.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 28.10.2014 made in I.A.No.4501 of 2013 in O.S.No.7803 of 2012 on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.Sidharthan

For RR1 & 2 : No appearance

For RR5 & 6 : M/s.Madhumathi
Additional Government Pleader (CS)

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 28.10.2014 made in I.A.No.4501 of 2013 in O.S.No.7803 of 2012 on the file of the IV Assistant Judge, City Civil Court, Chennai.

2. Petitioner is the first defendant, respondents 1 to 3 are the plaintiffs and respondents 4 to 6 are the defendants 2 to 4 in O.S.No.7803 of 2012 on the file of the IV Assistant Judge, City Civil Court, Chennai. The respondents 1 to 3 filed the said suit against the petitioner and respondents 4 to 6 to declare the two sale deeds dated 18.01.1996 and 22.01.1996 executed by the 4th respondent as null and void and for a permanent injunction restraining the petitioner and 4th respondent from alienating the suit property. The petitioner filed present I.A.No.4501 of 2013 under Order VII Rule 11 of C.P.C to reject the plaint on the ground of limitation, no cause of action and non-joinder of necessary parties. According to the petitioner, the sale deeds are dated 18.01.1996 & 22.01.1996. The patta was issued in the name of the petitioner. The respondents 1 to 3 filed petition for cancellation of patta on 05.05.2008 before the Revenue authorities. The same was rejected by the Revenue

authorities on 05.08.2010. In view of the same, the suit filed by the respondents 1 to 3 in the year 2012 is barred by limitation. A reading of the plaint shows that there is no cause of action for the suit. The respondents 1 to 3 have not impleaded the vendors of petitioner and predecessor in title.

3.The respondents 1 to 3 filed counter affidavit and narrated various proceedings and also submitted that based on the proceedings of the Commissioner of Survey and settlement deed dated 28.09.2011, patta was issued on 19.02.2012 to the respondents 2 and 3 and prayed of the dismissal of the application.

4.The learned Judge, considering the averments in the affidavit, counter affidavit, plaint and the documents filed along with the plaint, dismissed the application.

5.Against the order of dismissal dated 28.10.2014 made in I.A.No.4501 of 2013 in O.S.No.7803 of 2012, the present Civil Revision Petition is filed by the petitioner.

6.Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader (CS) for the respondents 5

and 6 and perused the materials available on record. Though respondents 1 and 2 entered appearance through counsel, there is no representation for them either in person or through counsel.

7.The petitioner has sought for rejection of plaint on three grounds: (i)Limitation (ii)No cause of action and (iii)Non-joinder of necessary parties.

8.As far as the question of limitation is concerned, the respondents 1 to 3 have stated various proceedings between the parties and suits filed by the petitioner. From the documents filed by the respondents along with the plaint, it is seen that patta has been issued to them on 19.04.2012. In view of the same, the contention of the petitioner that suit is barred by limitation cannot be decided at this stage. The question of limitation is mixed question of fact and law and the same can be decided only by appreciating the evidence let in by the parties during trial.

9.As far as the cause of action is concerned, the respondents 1 to 3 have specifically stated in the plaint various dates on which the cause of action has arisen for the suit. Whether the cause of action mentioned by the respondents 1 to 3 are illusory or not or

whether the respondents 1 to 3 are entitled to mention the suit based on the said cause of action can be decided only after appreciating the evidence let in by the parties.

10.As far as the non-joinder of necessary parties are concerned, it is not the ground based on which the plaint can be rejected summarily under Order VII Rule 11 of C.P.C.

11.The learned Judge considered all the above facts and dismissed the application. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 28.10.2014 made in I.A.No.4501 of 2013 in O.S.No.7803 of 2012.

12.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index :: Yes/No
Internet :: Yes/No

gsa

V.M.VELUMANI,J.

gsa

To

The IV Assistant Judge,
City Civil Court,
Chennai.



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