

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.66 of 2015
& M.P.No.1 of 2015

1.S.Rajan

2.Priya Evangelin Minor,
rep by her mother and natural guardian
Suhasini

3.Master Prince Rajkumar, Minor,
rep by her mother and natural guardian
Suhasini

4.Suhasini

.. Petitioners

Vs.

S.Jebaselvi

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.11.2014 made in I.A.No.14556 of 2012 in O.S.No.838 of 2012 on the file of the XII Assistant City Civil Court, Chennai.

For Petitioners : Mr.A.K.Raghavulu

For Respondent : Mr.K.Balamurali
for M/s.Shiva Kumar and Suresh

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 13.11.2014 made in I.A.No.14556 of 2012 in O.S.No.838 of 2012 on the file of the XII Assistant City Civil Court, Chennai.

2.The petitioners are defendants and respondent is the plaintiff in O.S.No.838 of 2012 on the file of the XII Assistant City Civil Court, Chennai. The respondent filed the said suit against the petitioners for declaration to declare the settlement deed dated 12.12.2008 executed by the first petitioner as null and void and not binding on the respondent in so far as her half share in the item no.2 of the suit schedule property and for Mesne profits derived from item no.1 of the suit schedule property. The petitioners filed I.A.No.14556 of 2012 under Order VII Rule 11 of C.P.C to reject the plaint. According to the petitioners, the suit filed by the respondent is barred by limitation. The respondent did not obtain permission under Order II Rule 2 of C.P.C and earlier proceedings and orders of this Court in O.S.No.7817 of 2010 operates as resjudicata and suppression of material facts. The respondent filed earlier suit, C.S.No.77 of 2009 before this Court which was transferred to Fast

Track Court-I, Chennai and renumbered as O.S.No.7817 of 2010 for declaration to declare the settlement deed dated 23.09.2008 and settlement deed dated 06.10.2008 executed by mother of parties in favour of the petitioners 2 and 3 and first petitioner respectively as null and void and are not binding on the respondent so far as her half share in the suit schedule property and for partition, permanent injunction directing the 4th petitioner and two others to deposit the rental amount into the Court derived from first item of the suit schedule property from the date of said plaint till the disposal of the suit in O.S.No.7817 of 2010.

3.In the said suit, the respondent filed I.A.No.71 of 2010 to amend the plaint to include the relief of declaration that settlement deed dated 12.12.2008 is null and void. The said application was allowed by the order dated 18.02.2011. The C.R.P.No.1280 of 2011 filed by the petitioners was allowed by this Court on 17.06.2011 and Review Application No.133 of 2011 filed by the respondent before this Court was dismissed on 13.09.2011 and S.L.P filed by the respondent was also dismissed. In view of the same, the suit is hit by principles of resjudicata. The respondent has not obtained any permission under Order II Rule 2 of C.P.C to file fresh suit. The settlement deed is dated 12.12.2008. The suit is filed on

03.02.2012 and it is barred by limitation and prayed for rejection of the plaint.

4.The respondent filed counter affidavit and contended that the respondent came to know about the settlement deed dated 12.12.2008 in the month of October, 2010 and filed the suit on 03.02.2012 within three years from the date of knowledge. I.A.No.71 of 2010 in O.S.No.7817 of 2010 filed to amend the plaint to include the relief that settlement deed dated 12.12.2008 as null and void was rejected on the ground that respondent is introducing new cause of action in the earlier suit. The validity of the settlement deed dated 12.12.2008 was not decided on merits. The respondent was not aware of the settlement deed dated 12.12.2008 when she filed earlier suit. Therefore, the question of obtaining leave under Order II Rule 2 does not arise. The application filed by Order II Rule 2 can be decided only by documents filed along with the plaint and prayed for dismissal of the application.

5.Before the learned Judge, the petitioners did not let in any oral evidence but filed 7 documents as Exs.P1 to P7. The respondent did not let in any oral and documentary evidence.

6.The learned Judge considering the averments in the affidavit, counter affidavit, plaint and judgments relied on by the parties, dismissed the application.

7.Against the said order of dismissal dated 13.11.2014 made in I.A.No.14556 of 2012 in O.S.No.838 of 2012, the present Civil Revision Petition is filed by the petitioners.

8.Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

9.From the materials on record, it is seen that petitioners are seeking to reject the plaint on the ground of limitation, resjudicata, suppression of material facts and also not obtained permission under Order II Rule 2 of C.P.C. As far as the limitation is concerned, according to the petitioners, the respondent is seeking declaration that settlement deed dated 12.12.2008 executed by the first petitioner as null and void and not binding on the respondent in so far as her half share in the item no.2 of the suit schedule property and filed suit only on 03.02.2012. On the other hand, the contention of the respondent is that she came to know about the settlement deed only in October 2010 when she applied for encumbrance

certificate and filed suit within three years from the date of knowledge of the document. The suit is not barred by limitation. The question of limitation is a mixed question of law and fact. Whether the respondent is aware of the settlement deed dated 12.12.2008 when it was executed or registered or she came to know about the settlement deed only in October, 2010 can be decided only by appreciating the evidence let in by the parties during trial.

10.As far as the resjudicata is concerned, the contention of the petitioners is that the issue whether settlement deed dated 12.12.2008 is null and void is not an issue in earlier suit O.S.No.7817 of 2010. I.A.No.71 of 2010 filed by the respondent was rejected by this Court and the same was confirmed by the Hon'ble Apex Court on the ground that the respondent is introducing a new cause of action.

11.In view of the above facts, the contention of the learned counsel for the petitioners that the respondent ought to have obtained leave under Order II Rule 2 of C.P.C is without merits. Further, whether the settlement deed dated 12.12.2008 is valid or null and void was not decided finally on merits. The contention of the learned counsel for the petitioners that respondent has

suppressed the material facts and therefore, the suit is liable to be dismissed is without merits.

12.From the order of the learned Judge, it is seen that the respondent has referred to earlier proceedings and orders passed in I.A.No.71 of 2010 and C.R.P.No.1280 of 2011. It is well settled that while deciding the application for rejection of plaint, the Court will consider only the averments in the application. The averments in the application filed for rejection of the plaint and documents filed by the defendant and averments in the written statement cannot be taken into consideration at this stage. The learned Judge has considered all the above facts and rightly dismissed the application. There is no reason or circumstances warranting interference by this Court with the order of the learned Judge dated 13.11.2014 made in I.A.No.14556 of 2012 in O.S.No.838 of 2012.

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

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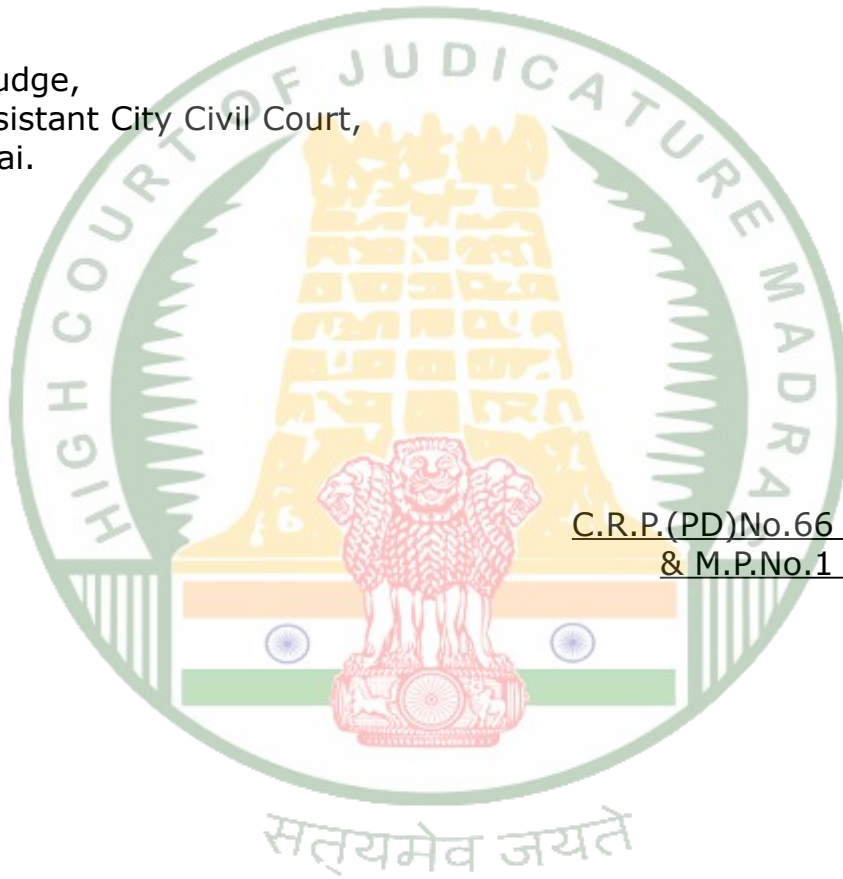
Index :: Yes/No
Internet :: Yes/No
Speaking Order/Non-Speaking Order
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V.M.VELUMANI,J.

gsa

To

The Judge,
XII Assistant City Civil Court,
Chennai.



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