

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 697 of 2018

and

C.M.P No.3649 of 2018

M/s. Yako Star Builders Pvt. Ltd.,
rep by its Managing Director
M.S. Yakobdeen & A. Rajabunisa

.. Petitioner

Vs

1. S. Sanjeev Kumar
2. Vijayalakshmi
3. Gomathi
4. Sumathi
5. Rubanvathi @ Indumathi
6. Ravivarma

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order dated 31.10.2017 made in I.A. No. 2866 of 2017 in O.S. No. 4534 of 2015 on the file of III Additional City Civil Judge, Chennai.

For Petitioner : Mr.K. Rajasekaran

ORDER

This revision arises against the fair and decreetal order dated 31.10.2017 made in I.A. No. 2866 of 2017 in O.S. No. 4534 of 2015 on the file of III Additional City Civil Judge, Chennai.

2. The 1st respondent has filed the suit in O.S. No. 4534 of 2015 for declaration, partition and separate possession. The 1st respondent had sought to declare that the sale deed dated 27.04.2011 executed by the defendants 1 to 5 in favour of the 6th defendant is null and void and not binding on the 1st respondent/ plaintiff's share, had also sought for preliminary decree and separate possession of 1/6th share and for permanent injunction against the petitioner/ 6th defendant. The petitioner being the 6th defendant in the aforesaid suit, filed an Interlocutory Application in I.A. No. 2866 of 2017, under Order 7 Rule 11 of CPC to reject the plaint. The court below dismissed the said application on 31.10.2017. Challenging the same, the present revision petition has been filed by the petitioner.

3. The learned counsel for the petitioner would submit that the

said suit is barred by limitation since the sale deed was executed on 27.04.2011, but the suit has been filed only on 04.08.2015, though the 1st respondent/ plaintiff has made a complaint to the Commissioner of Police, Chennai on 11.07.2012. The other ground raised by the petitioner is that the 1st respondent/ plaintiff has not valued the suit property and the court fees has not been paid as per Section 25(a) and 25 (b) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. According to the petitioner, without appreciating both the grounds raised by the petitioner, the court below has dismissed the application.

4. Considered the aforesaid submission of the learned counsel for the petitioner and perused the material available on record.

5. The first contention of the petitioner is that the suit is barred by limitation since the suit has been filed beyond the period of three years, from the date of registration of the sale agreement. On perusal of the prayer in the suit, it is seen that the 1st respondent/ plaintiff has also sought for partition and separate possession of the suit property. When there is mixed question of law involved in the present suit, the aforesaid issue of limitation for filing of the suit can be decided at the

time of trial in the suit. Hence, at this stage, there is no force in the contention of the petitioner to interfere with the order of the court below.

6. So far as the second contention that the plaintiff has not paid the court fees as per Section 25(a) and 25(b) of the Tamil Nadu Fees and Suits Valuation Act, 1955, the court below has rejected the contention of the petitioner. It is also open to the petitioner to place the material before the court below at the time of trial, to establish that the payment of court fees has not been made as per the provisions under Section 25(b) of the Act. Therefore, the second ground also, at this stage, cannot be considered at this stage.

7. Therefore, this Court finds no error or illegality in the order passed by the court below and hence the revision petition is liable to be dismissed.

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8. In fine, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

28.02.2018

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy on or before 26.04.2018]

avr

To

The III Additional Judge
City Civil Court
Chennai.



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D. KRISHNAKUMAR J.,

avr



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