

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.(PD).No.893 of 2018

and

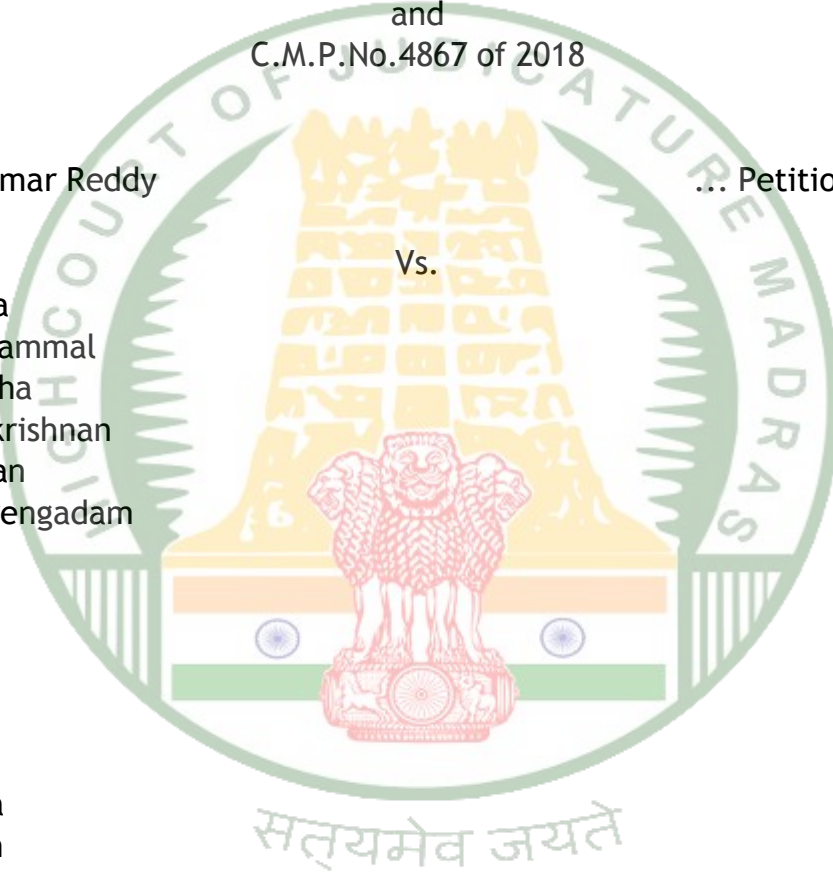
C.M.P.No.4867 of 2018

Kishore Kumar Reddy

... Petitioner

Vs.

- 1.Anusuaya
- 2.E.Pachaiammal
- 3.S.Vasantha
- 4.M.Ramakrishnan
- 5.M.Bakthan
- 6.M.Thiruvengadam
- 7.Rangan
- 8.Anbu
- 9.Malliga
- 10.Banu
- 11.Vijaya
- 12.Shanthi
- 12.Manjula
- 14.Sathyan
- 15.Raman
- 16.S.Elumalai
- 17.Arumugam
- 18.K.S.Venu
- 19.Viswanathan
- 20.Vasu
- 21.Sakunthala
- 22.Kasthuri
- 23.Veeraragavan
- 24.Munusamy
- 25.Ammakannu



WEB COPY

26.Arasu  
 27.Andalammal  
 28.The Sub Registrar,  
 Kundrathur,  
 Chennai - 69.

29.The Sub Registrar,  
 Poonamallee,  
 Chennai - 600 056.

... Respondents

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal orders passed in I.A.No.470 of 2016 in O.S.No.85 of 2015 by the learned II Additional District Judge, Thiruvallur at Poonamallee dated 07.11.2017.

For petitioner : Mr.R.Aparna

\* \* \* \*

### ORDER

The Civil Revision Petition is filed against the fair and decreetal orders passed in I.A.No.470 of 2016 in O.S.No.85 of 2015 by the learned II Additional District Judge, Thiruvallur at Poonamallee dated 07.11.2017.

2. According to the petitioner, the first respondent/plaintiff filed a suit in O.S.No.85 of 2015 for partition and declaration against the petitioner and the other respondents. In the aforesaid suit, the petitioner has filed an Interlocutory Application under Order VII Rule 11 (A) and (D) of

the Code of Civil Procedure in I.A.No.470 of 2016 to reject the plaint in O.S.No.85 of 2015 on the file of the II Additional District Judge, Thiruvallur at Poonamallee.

3. The vendors of the petitioner and the petitioner are in uninterrupted possession of the suit schedule property for over three decades which is within the knowledge of the plaintiff/first respondent and as such she has not made any claim pertaining to the suit property as known to law and she lost her right to seek any relief much less made out in the plaint. Subsequently, the other defendants filed a suit in O.S.No.176 of 2008 on the file of the Subordinate Court, Poonamallee and the same was dismissed for default as early as on 12.01.2015. The first respondent had the knowledge of the transaction in the year 2007 itself and no cause of action arose for 'B' schedule property and the suit is barred by limitation. Hence, the respondent has filed the present application to reject the plaint.

4. For considering the application filed under Order VII Rule 11 C.P.C., it is only on the basis of the averments made in the plaint and not the averments made in the written statement. There is a bundle of the fact which is necessary for the plaintiff to prove the case of the plaintiff in the suit. The decision of the Hon'ble Supreme Court in the case of **Om Prakash**

*Srivastava Vs. Union of India and Anr.* reported in **2006 (6) SCC 207**, wherein, it was held that "by "cause of action" it is meant every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which is necessary for the plaintiff to prove in order to succeed in the suit"

5. In the light of the decision of the Hon'ble Supreme Court in the case of **Balasaria Contruction (P) Ltd Vs. Hanuman Seva Trust and Others** reported in **(2006) 5 SCC 658**, wherein the Hon'ble Apex court has held as under:

*"8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of*

*the Code of Civil Procedure.*

6 . In *Kamala v. K.T. Eshwara Sa* [(2008) 12 SCC 661], the

Hon'ble Supreme Court held as under:

*"23.The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage."*

It is clear from the above judgments that the question of limitation is a mixed question of law which requires not only examination of the plaint but also other evidence and the same cannot be decided at the threshold stage.

7. In view of the fact that the specific ground raised by the petitioner viz., the suit is barred by limitation, itself is a mixed question of fact and law which has to be decided by adducing oral and documentary evidence only at the time of the trial. At this stage, this Court is not inclined to interfere with the order passed by the Court below.

8. Therefore, the Civil Revision Petition stands dismissed.

Consequently, the connected miscellaneous petition is closed. No costs.

14.03.2018

Speaking order/Non-speaking order

Index: Yes/No

ah/vaan

To

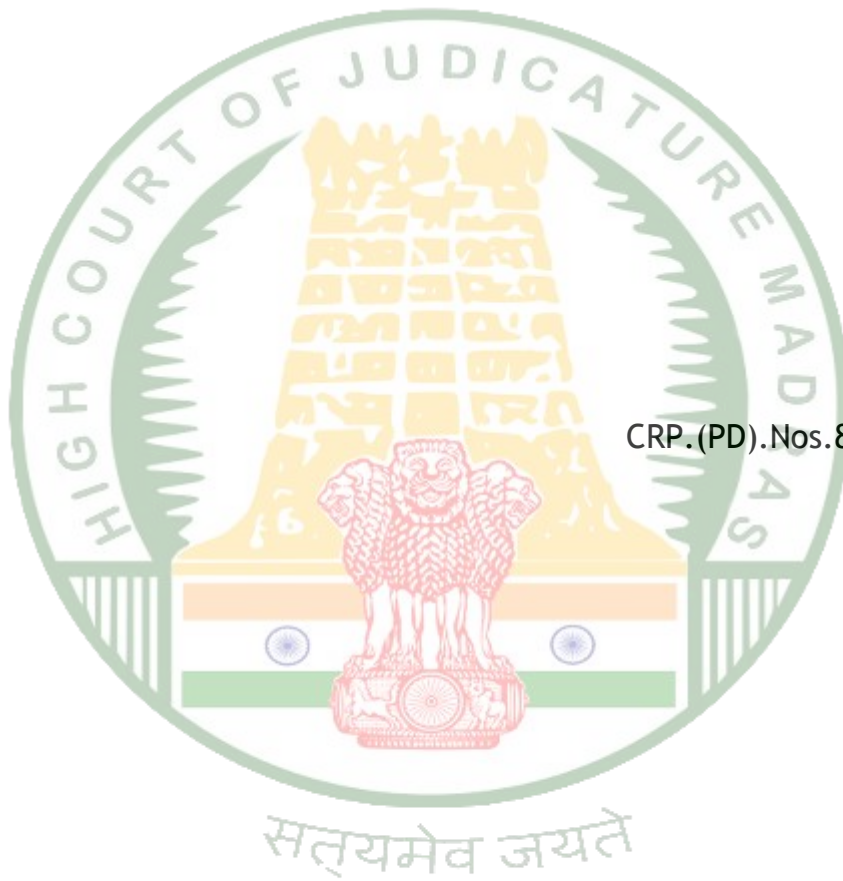
The II Additional District Judge,  
Thiruvallur at Poonamallee.



WEB COPY

D.KRISHNAKUMAR.J,

ah/vaan



CRP.(PD).Nos.893 of 2018

WEB COPY

14.03.2018