



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.03.2018

Delivered on : 28.04.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (PD) (MD) No.385 of 2018

V.Sethuraman : Petitioner/Plaintiff
Vs.

1.Maragatham
2.Jeyabharathi
3.Shanmugam
4.Padma
5.Seetha

: Respondents / Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order of rejection dated 28.08.2017 passed by the learned District Munsif, Mudhukulathur in unnumbered OS.No.--- of 2017 and to direct the learned District Munsif, Mudhukulathur to number the said suit.

For Petitioner : Mr.S.Louis

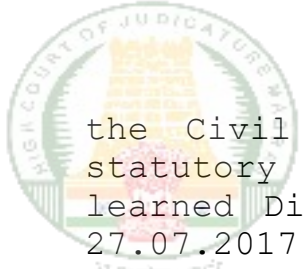
ORDER

This Civil Revision Petition has been filed challenging the order of rejection dated 28.08.2017 made in unnumbered OS.No.--- of 2017 on the file of the District Munsif Court, Mudukulathur.

2. Heard the learned Counsel for the petitioner and perused the materials available on record.

3. The petitioner has filed a suit for declaration and for permanent injunction on the file of the District Munsif Court, Mudukulathur.

4. The learned Counsel for the petitioner would submit that the suit property was leased out to his ancestors by the ancestors of the defendants' as early as in the year 1919 by a registered lease deed. The lease period was extended periodically upto the year 1981. The plaintiff is having continuous possession and enjoyment of the leased out property for more than 100 years and the statutory period to redeem the leased out property expired as early as on 05.06.2011 and therefore, on 01.04.2017 the defendants approached the plaintiff to get the lease amount and to hand over the property, which resulted the plaintiff to approach



the Civil Court at Mudukulathoor seeking declaration that the statutory time to redeem the leased out property lapsed. The learned District Munsif, Mudukulathur has returned the plaint on 27.07.2017 stating that the petition was not maintainable and the same was represented on 02.08.2017. However, the learned Judge, vide order dated 28.08.2017, rejected the plaint stating that the relief of declaration is barred by limitation, against which, the present Civil Revision petition has been filed by the plaintiff.

5. Before venturing into the rival submissions made by the learned counsel for the petitioner, for better appreciation, it would be worthwhile to refer to Order VII Rule 11 of the Code of Civil Procedure, which is as under :

11. Rejection of plaint- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

[144] [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

6. This Court is of the view that the question as to whether the suit is barred by limitation or not can be decided only after numbering the suit, because the plaintiff can prove it through evidence. In case, there are any defects in presentation/re-presentation, the plaint can be returned for compliance. However, in the case on hand, the plaint has been



rejected on the ground of limitation. The learned Judge, in my considered view, ought to have given an opportunity for the plaintiff by numbering the plaint to prove whether the case is barred by limitation or not.

WEB COPY 7. In fine, the Civil Revision Petition is allowed, the order of rejection passed by the learned District Munsif, Mudukulathur, dated 28.08.2017 is set aside. The learned Judge is directed to see as to whether the plaint filed is in order and if so, the learned Judge is directed to number the plaint and proceed with the same, in accordance with law, by framing a preliminary issue as to whether the suit is barred by limitation or not, untrammelled and uninfluenced by any of the observations made by this Court in this order. No costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif,
Mudhukulathur.
2. The Section Officer, (2 copies)
VR section,
Madurai Bench of Madras High court,
Madurai.

+1cc to Mr.S.Louis, Advocate Sr.No.64654

RM

VB/SV/MMS/SAR2/15/05/2018/3P/5C

order made in
C.R.P. (PD) (MD) No.385 of 2018
28.04.2018