



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) No.2343 of 2018

and

C.M.P. (MD) No.10400 of 2018

Varalakshmi

... Petitioner

/Vs./

1.Gajendran

2.Kamaraj

... Respondents

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 20.07.2018 made in I.A.No.127 of 2018 in O.S.No.42 of 2013 on the file of the learned Additional Subordinate Judge, Thanjavur, Thanjavur District and allow the above CRP.

For Petitioner

: Mr.S.Pari

ORDER

O.S.No.42 of 2013 was instituted by the first respondent herein namely one Gajendran against the revision petitioner and her husband namely Kamaraj. The suit is for declaration and recovery of possession. The suit has been filed on the strength of a sale deed dated 13.07.2007, which is said to have been executed by the revision petitioner's husband namely Kamaraj in favour of the plaintiff. The revision petitioner filed a written statement on 07.12.2013. Issues have been framed the suit. The trial has commenced. The plaintiff side evidence has concluded. At this stage, the revision petitioner filed I.A.No.127 of 2018 for raising a counter claim. The counter claim sought for by the revision petitioner is for declaring that the sale deed dated 13.07.2007 executed by the first defendant in favour of the plaintiff is sham and nominal and for consequential injunction. The Court below by order dated 20.07.2018 dismissed the said IA. Challenging the same, this civil revision petition has been filed.

2. The learned counsel appearing for the revision petitioner placing reliance on the decision reported in the case of **Vijay Prakash Jarath vs. Tej Prakash Jarath** reported in **2016 2 CTC 442** and in the case of **P.Ramasami and others vs. Nagai Sivasakthi Benefit Fund Limited** reported in **2016 2 CTC 167** contended that the filing of the counter claim cannot be said to be time barred.



3. No doubt as a matter of proposition, the learned counsel is right. But then, the facts clearly do not support his submission.

4. The suit has been filed on the strength of the sale deed dated 13.07.2007. The suit was filed in March 2013. The revision petitioner herein, who is figuring as the second defendant filed a written statement on 07.12.2013. But the present counter claim seeking declaratory relief in respect of the said document has been filed on 09.03.2018.

5. The learned counsel appearing for the revision petitioner states that there are some matrimonial issues pending between the first and the second defendants and that therefore, the revision petitioner / second defendant was not aware of the execution of the aforesaid sale deed, which is of the year 2007. But then the revision petitioner got clear knowledge about the execution of the sale deed by 2013 itself. In fact, she had filed her written statement on 07.12.2013. In paragraph No.8 of her written statement, the revision petitioner had taken a categorical defence that the said document executed in the name of the plaintiff is only sham and nominal. When such a plea has been unambiguously taken in the written statement, she ought to have filed a counter claim immediately thereafter. To seek declaratory relief more than 4 ½ years is clearly time barred. The declaratory relief as sought for, unless the larger relief also sought is one for recovery of possession, has to be filed within three years. Since on the face of it, the declaratory relief sought for by the petitioner is time barred, I sustain the order impugned in this civil revision petition. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (ADMIN-I)

// True Copy //

Sub Assistant Registrar(CS-III)

To

The Additional Subordinate Judge,
Thanjavur,
Thanjavur District.

+1cc to Mr.S.Pari, Advocate, Sr.No.91220.