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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD)No.827 of 2017

and

C.M.P. (MD)No.3667 of 2017

Ramanand Singh

... Petitioner / 1st Defendant

vs.

1.R.Maheswari

... 1st Respondent / Plaintiff

2.Arjunan

... 2nd Respondent / 2nd Defendant

PRAYER: Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.867 of 2015 on the file of the District Munsif, Trichy in respect of the revision petitioner.

For Petitioner : Mr.S.A.Ajmalkhan

For Respondent : Mr.P.Athimoolapandian for R.1

ORDER

This Civil Revision Petition has been filed to strike off the plaint in O.S.No.867 of 2015, on the file of the District Munsif, Trichy in respect of the revision petitioner.

2. The facts of the case, as averred in the affidavit, are as follows:

2.1. The suit in O.S.No.867 of 2015 has been filed by the first respondent, as plaintiff, before the District Munsif, Trichy, with the petitioner herein as the first defendant and the second respondent herein as the second defendant. The suit was filed seeking the relief of declaration of the sale deed dated 30.05.2008 vide Document No.5316/2008 alleged to have been executed by the husband of the plaintiff as *ab-initio* null and void with a consequential relief of injunction restraining the defendants from interfering with plaintiff's peaceful possession and enjoyment. In order to strike off the plaint in the said suit, the present revision came to be filed.

3. The sum and substance of the arguments put forth by the learned Counsel appearing for the petitioner is as follows:

3.1. The learned Counsel for the revision petitioner would submit that the suit property was purchased by one Ravichandran, plaintiff's husband, vide registered sale deed dated 11.06.2001 and he was the absolute owner of the suit property. On 30.05.2008, the said Ravichandran has executed a deed in favour of the petitioner, thereby, sold the suit property to the petitioner, which was registered before the Sub Registrar Office vide Document No.5316/2008. On 10.09.2009, the said Ravichandran died and nearly



after passage of seven years, the plaintiff has filed the present suit, challenging the alleged deed.

3.2. The learned Counsel for the petitioner would further submit that as per Article 56 of the Limitation Act, 1963, the period of limitation to declare the forgery of an instrument issued or registered is three years. Therefore, the suit instituted by the plaintiff is barred by Limitation Act.

3.3. The said Ravichandran's wife/plaintiff alone has preferred the suit, but the other legal heirs, viz., Ravichandran's sons and daughter have not preferred the suit. Moreover, there is no cause of action between the petitioner and the plaintiff and as such, the plaint has to be strike off by the lower Court.

4. On the other hand, the submissions made by the learned Counsel appearing for the first respondent is as follows:

4.1. Narrating the events, with regard to the purchase of the property by the first respondent's (plaintiff's) husband, (late) Ravichandran, by registered sale deed dated 11.06.2001, the learned Counsel for the first respondent would submit that the suit property is situated in a remote village and there is no dwelling house adjacent to the suit property. Since their property was inundated due to heavy rain, they left the property and thereafter, they again moved to the suit property and put up an asbestos structure and are living there.

4.2. All of a sudden, the petitioner herein/first defendant, in the year 2014, has insisted the plaintiff and her family members to vacate and hand over the vacant possession of the suit property. On enquiry with the petitioner/first defendant, the plaintiff came to know about the alleged sale deed.

4.3. Upon verifying the so called sale deed, the plaintiff found it as to be a forged one and with necessary evidences, she has instituted the suit. Truth or otherwise, the same has to be adjudicated at the stage of trial and therefore, the learned Counsel seeks to dismiss the present civil revision petition.

5. Heard the learned Counsel appearing for the petitioner as well as the learned Counsel appearing for the first respondent and perused the documents placed on record. There is no representation for the second respondent.

6. A perusal of records would show that the petitioner/first defendant has alleged to sell the suit property to the second respondent/second defendant, since the petitioner had already mortgaged the suit property in his favour.

7. A perusal of records would also show that the petitioner/first defendant has alleged that the sale deed was executed on 30.05.2008, by handing over the possession and moreover,



the original sale deed was handed over to him, by the said Ravichandran. But, the original sale deed was very well available with the first respondent/plaintiff, which shows the falsity of the petitioner's claim.

8. Moreover, the address of the said Ravichandran found in the alleged sale deed differs from the I.D. proof, viz., Ration Card.

9. It is seen from the plaint that the first respondent/plaintiff has submitted that out of the lawful wedlock, they have two sons namely, Amsarajan and Anand Kalaivanan and a daughter, namely, Anusuya Devi. The plaintiff is a house maid servant and her two sons are unemployed and she has got no income to pay the requisite Court fee.

10. To prove the possession of the suit property, the first respondent/plaintiff has produced copies of ration card, tax receipt and letter dated 19.01.2015 issued by the President of Munikandam Village Panchayat.

11. If the claim of the first respondent / plaintiff that they are in possession of the suit property is proved, then the petitioner's / first defendant's claim that on 30.05.2008, the sale deed was executed and possession was also handed over to him would become negative.

12. Though the said Ravichandran was died on 10.09.2009, till May'2014 the petitioner herein has not come forward to claim title. Thereafter, the petitioner along with peoples involved in one of the noble professions, viz., Advocates have arrived at the suit property and threatened the first respondent/plaintiff, which forced the first respondent to file the suit.

13. In view of the foregoing discussions, this Court is of the view that *prima facie* case has been made out by the learned Counsel appearing for the respondent that some foul play has been made by the petitioner in the registration of the sale deed. Moreover, the petitioner has not taken any steps to reject the plaint before the lower Court, but, on the other hand, has, straight away, filed this petition before this Court, which itself is an abuse of process of law.

14. Considering the facts and circumstances of the case, this Court is of the view that the matter has to be, necessarily, adjudicated before the trial Court, since the facts are disputed here.

15. Therefore, this Court is with no other option, except to dismiss this petition.

16. In result, this petition is dismissed. The District Munsif, Trichy is directed to dispose of the suit in O.S.No.867 of 2015, as



expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl side)

/True copy/

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Sub Assistant Registrar

To

The District Munsif,
Trichy.

Copy to : The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1cc to Mr.P.ATHIMOOLAPANDIAN,Advocate,SR.43080

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