



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD).Nos.2237 of 2018

and

C.M.P. (MD).No.10071 of 2018

Vijayalakshmi

... Revision Petitioner/IIInd Respondent/
2nd Defendant

Vs

1.N.Palanisamy

Ist Respondent/Petitioner/Plaintiff

2.K.Kumarasamy

...IInd Respondent/Ist Respondent/I Defendant

PRAYER : Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.69 of 2018 in O.S.No.24 of 2014 on the file of the Additional District Court (Fast Track Court), Palani dated 04.08.2018.

For Petitioner : Mr.T.Lenin Kumar

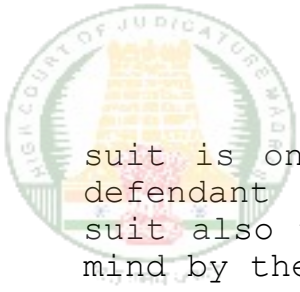
For respondents : Mr.K.Kumaravel

ORDER

The second defendant in O.S.No.24 of 2014 on the file of the Additional District Court/ Fast Track Court, Palani is the revision petitioner herein. The suit is one for recovery of money. After the trial commenced and when the case was posted for cross examination of the defendant, the plaintiff filed I.A.No.69 of 2018 for amending the plaint. The plaintiff wanted to seek declaratory relief impeaching the sale made by the defendant on 24.12.2013. The Court below by the order impugned in this Civil Revision Petition allowed the said I.A. Challenging the same, this Civil Revision Petition has been filed.

2.The learned counsel appearing for the revision petitioner submitted that since the trial was half way through, the plaintiff was not entitled to seek amendment of the plaint unless he can meet the due diligence standard set out in the proviso to Order 6 Rule 17 of CPC.

3.In this case, the Court below has not recorded its satisfaction in this regard. Secondly, the impugned sale is dated 24.12.2013. The amendment application was taken out only on 11.04.2018. Full four years have gone by. Any declaratory relief sought should have been sought within a period of three years from date when the cause of action arose. In this connection, on the face of it, application for the relief was time barred. The



suit is one for recovery of money. Now the sale effected by the defendant is sought to be impeached. Thus, the character of the suit also will get altered. These three aspects were not borne in mind by the Court below.

WEB COPY

4. Accordingly, the order impugned in this Civil Revision Petition is set aside and this CRP is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (PROTOCOL)

/True Copy/

Sub Assistant Registrar (CS-I)

To
Additional District Court (Fast Track Court),
Palani.

- 1 CC TO Mr.K.Kumaravel , ADVOCATE IN SR No.89750
- + 1 CC TO Mr.T.LENIN KUMAR, ADVOCATE IN SR No.89475.
-
- PNN
- DS RSK SAR1 14 11 2018 2P 4C

ORDER MADE IN
C.R.P. (PD) (MD) .Nos.2237 of 2018
and
C.M.P. (MD) .No.10071 of 2018

09.10.2018