

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2019

CORAM :

THE HON'BLE MR. JUSTICE M. DURAISWAMY

C.R.P. (NPD) No.3468 of 2011

and

M.P. No.1 of 2011

J.AnandKumar

... Revision Petitioner

Vs.

J.Jayakumar

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 27.03.2010 passed by the learned V Additional Judge, City Civil Court, Chennai, in C.M.A.No.51 of 2009, confirming the order dated 31.01.2008 passed in E.P.No.2513 of 2006, by the IX Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Manickavel

For Respondent : Mr.T.S.N.Prabhakaran

ORDER

Challenging the judgment and decree passed in C.M.A.No.51 of 2009 on the file of the V Additional City Civil Court, Chennai, confirming the order passed in E.P.No.2513 of 2006 on the file of the IX Assistant City Civil Court,

Chennai, the Judgement Debtor has filed the above Civil Revision Petition.

2.The respondent/plaintiff filed a suit in O.S.No.12874 of 1996 on the file of the Additional District and Sessions Court (Fast Track Court No.1), Chennai, for specific performance. After contest, the suit was decreed in favour of the respondent/plaintiff on 31.07.2002. Pursuant to the decree obtained in the suit, the respondent/plaintiff filed an execution petition in E.P.No.2513 of 2006 on the file of the IX Assistant City Civil Court, Chennai, for executing the decree. The Execution Court, by order dated 31.01.2008, ordered the execution petition, directing the petitioner/defendant to execute the release deed as per the agreement dated 24.03.1993. Challenging this order, the petitioner/defendant filed an appeal in C.M.A.No.51 of 2009 on the file of the V Additional City Civil Court, Chennai. The lower Appellate Court also confirmed the order passed by the Execution Court and dismissed the appeal. As against the concurrent judgments of the Courts below, the petitioner/defendant has filed the above Civil Revision Petition.

3.The contention of the learned counsel appearing for the petitioner/defendant is that the respondent/plaintiff has filed the suit for mandatory injunction and not for specific performance and therefore, the limitation for executing the decree is only three years under Article 135 of the Limitation Act.

4. But, on a perusal of the prayer sought for in the plaint, it is clear that the plaintiff had filed the suit for specific performance and not for mandatory injunction. That apart, the defendant himself, in his written statement filed in O.S.No.12874 of 1996, has stated that the plaintiff has filed the suit for specific performance. When the petitioner/defendant has taken such a stand in the written statement, the petitioner/defendant cannot take a contrary stand now. Therefore, the limitation for executing the decree for specific performance would fall under Article 136 of the Limitation Act and not under Article 135 of the Limitation Act. Therefore, the execution petition filed in the year 2006 is well within the time.

5. The learned counsel appearing for the petitioner/defendant submitted that the respondent/plaintiff has not paid the sum of Rs.50,000/- to the petitioner/defendant. The learned counsel appearing for the respondent/plaintiff submitted that the respondent/plaintiff would pay the amount and get the document executed and registered in his favour.

6. Under these circumstances, I am of the considered view that the respondent/plaintiff is entitled to get the release deed executed and registered in his favour on payment of Rs.50,000/- to the

petitioner/defendant, as decreed by the trial Court in O.S.No.12874 of 1996.

M. DURAISWAMY, J.

mkn

7.I find no error or irregularity in the orders passed by Courts below.
This Civil Revision Petition is devoid of merits and stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

05.11.2019

mkn

Index : Yes / No
Internet : Yes / No
Speaking order / Nonspeaking order

To

1.The V Additional Judge,
City Civil Court,
Chennai.

2.The IX Assistant Judge,
City Civil Court,
Chennai.

सत्यमेव जयते
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