

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.04.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD)Nos.992 and 993 of 2012
and M.P.No.1 of 2012

E.Padmanabhan

..

Petitioner
[in both CRPs]

versus

P.Rajan (deceased)

1.P.Periyanayagi

2.B.Rajasekar

3.H.Mustafa

4.R.Kasthuri

5.R.Kalai Selvi

6.R.Murugesan

7.R.Selvaganesh

..

Respondents
[in both CRPs]

COMMON PRAYER: Civil Revision Petitions have been filed under Article 227 of the Constitution of India, against the orders dated 18.08.2011 made in I.A.Nos.19883 and 19884 of 2006 in O.S.No.7613 of 2005 respectively on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

For Petitioner
[in both CRPs]

: Mr.A.Dhiraviyanathan

For Respondents
[in both CRPs]

: Mr.M.Kamaraj

COMMON ORDER

Since the issue involved in both the Revisions are one and the same, a common order is being passed to dispose of these Revisions.

2. These Civil Revision Petitions have been filed as against the order of dismissal of the trial Court, the applications filed by the plaintiff to amend the suit and also seeking permission to implead the proposed defendants 3 and 4.

3. The suit was originally filed for bare injunction alleging that the plaintiff's father-in-law one Karuppiah, who was the owner of the property died on 11.12.1994, his only son was predeceased on 18.02.1987. It is inter alia contended that the plaintiff is in possession of the suit property continuously whereas the defendants 1 and 2 without any valid title tried to trespass over the suit property on 20.11.2005. During the pendency of the suit, an application has been taken by the plaintiff contending in the written statement of the first defendant had taken stand that the property was sold by Karuppiah on 04.05.1983 itself to one Rajasekhar and Mustafa, from them the second defendant has purchased the property in the year 1986 and thereafter, the first defendant has purchased the same on 15.03.1991. Hence, it is the

contention of the plaintiff that the said Karupiah has not executed the document and during the pendency of the suit the defendant has trespassed the suit property and hence, sought to amend the plaint seeking declaration to declare the sale deed executed by Karupiah and all the sale deeds in respect of the suit properties as null and void. Similarly, he has also sought to implead the vendors of the second defendant. The trial Court after analysing the entire pleadings has dismissed the application.

4. The learned counsel appearing for the revision petitioner would contend that the amendment would not change the cause of action only during the pendency of the suit they came to know about the transfer sale deed of the year 1983 and the subsequent sale deeds, therefore, they sought an amendment and the trial Court ought to have allowed it.

5. Heard the learned counsel appearing for the respondents.

6. I have perused the orders of the Court below. When the suit itself filed for permanent injunction claiming that the plaintiff is in possession of the property, as noted by the trial Court no documents, files indicate the possession as on the date of the suit. Even at the time of these applications,

the encumbrance certificate was obtained only prior to the sale deed of the year 1983, therefore the trial Court has come to the conclusion that the plaintiff came to know about the sale transaction only at the time of pendency of the suit cannot be believed.

7. It is to be noted now the plaintiff sought to cancel the documents executed in the year 1983, any documents sought to be cancelled, the same ought to have been done within a period of 3 years. The very conduct of the plaintiff filing the encumbrance certificate to the period not covered the sale deed of the year 1983 clearly indicate that they are aware of the sale deed executed in respect of the property. That being the position now the plaintiff cannot be permitted to convert the suit for permanent injunction into declaration suit. The suit for declaration ought to have been filed within 3 years, the relief to cancel the document ought to have been asked within 3 years. When the relief itself is barred under law, by way of amendment they cannot introduce the same in the present suit under the pretext that the defendants has trespassed into the property and they were aware of the document only during the pendency of the suit.

8. Admittedly, the property has been transferred in the year 1983. The registration of the document itself is a public notice. Therefore, it cannot be contended by the revision petitioner that they have the knowledge about the document only during the present suit and the relief sought to be amended is clearly barred under law. Further, there is no whisper in his application, when the alleged trespass was made by the defendants.

9. In view of these facts, I do not find any error or illegality in the order passed by the trial Court. Further as far as the application filed to implead the vendors of the second defendant, it is also indirect way of seeking relief against the second defendant. Initially, when an application to implead the vendors is dismissed, thereafter the predecessors in title sought to be impleaded that cannot also be permitted. Hence, these Revisions lacks merit.

10. With these observations, both the Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

WEB COPY

10.04.2019

Speaking Order/Non Speaking Order

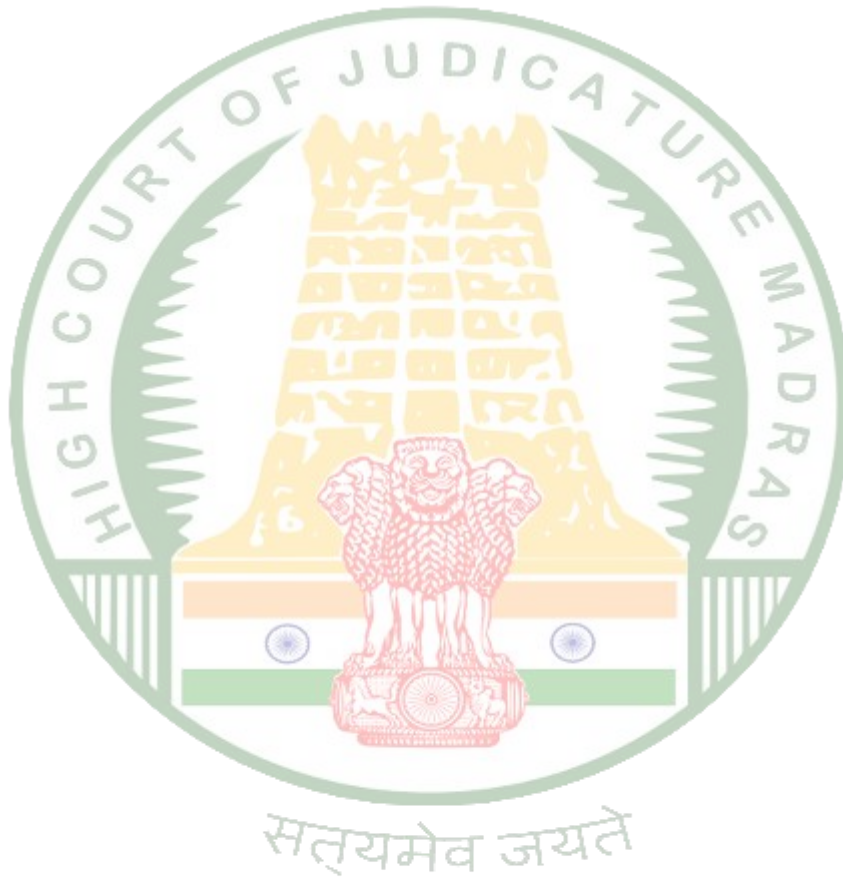
Index : Yes / No

Internet : Yes

sri

To

The XI Assistant Judge,
City Civil Court, Chennai.



WEB COPY

N.SATHISH KUMAR, J.,
sri



C.R.P.(PD)Nos.992 and 993 of 2012
and M.P.No.1 of 2012

WEB COPY

10.04.2019