

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

C O R A M

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD) No.3694 of 2013
and M.P.No.1 of 2013

1. S.Manikandan
2. S. Thanganagayagam
3. Nageswaran
4. A.Bhuvaneshwaran
5. S.Rajeswari

... Petitioners

Vs.

1. Rachel Flowrence Lightingale
2. Jacob Jeevamani
3. William Shakesphere
4. Milton Sundar Singh
5. K.S.Manikandan
6. Tolstoys Bell Graham
7. Shelly Socrates
8. Charles Winston Churchill
9. Mohan

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 28.01.2013 made in I.A.No.748 of 2012 in O.S.No.195 of 2010 on the file of the District Munsif, Tambaram.

For Petitioners : Mr.K.K.Murralitharan

For 1st to 4th

Respondents : Mr.M.Prakash Kumar
for M/s.Span Association

For 5th to 9th

Respondents : No appearance

- - - - -

ORDER

The instant Revision has been filed challenging the order dated 28.01.2013 passed in I.A.No.748 of 2012 in O.S.No.195 of 2010 by the learned District Munsif, Tambaram.

Brief facts leading in the instant Revision are as follows:-

2. The petitioners are defendant Nos.2 to 6 in the suit in O.S.No.195 of 2010 filed by the respondents. The respondents filed the suit in O.S.No.195 of 2010 before the Court of District Munsif at Tambaram, seeking for a declaration that sale deeds executed in favour of the petitioners by the first defendant in the suit, is null and void and they have also sought for consequential injunction restraining the petitioners as well as the first defendant in the suit from further encumbering the suit schedule property.

3. During the pendency of the suit, the petitioners filed I.A.No.748 of 2012 under Order VII Rule 11 C.P.C., to reject the plaint filed by the respondents in O.S.No.195 of 2010 on the following grounds:-

- (a) The suit is barred by law of limitation,
- (b) The suit has been undervalued by the respondents, and
- (c) The suit is barred under the provisions of Section 202 of the Indian Contract Act, 1872.

4. The counter affidavit was also filed by the respondents in I.A.No.748 of 2012 denying the allegations made by the petitioners and they have submitted that the suit has been properly valued and the suit is filed well within the period of limitation.

5. The trial Court, by its order dated 28.01.2013, dismissed I.A.No.748 of 2012 in O.S.No.195 of 2010 filed by the petitioners. Aggrieved by dismissal of I.A.No.748 of 2012 in O.S.No.195 of 2010, the instant Revision has been filed.

6. Heard Mr.K.K.Muralitharan, learned counsel appearing for

the petitioners and Mr.M.Prakash Kumar, for M/s.Span Association, appearing for respondent Nos. 1 to 4.

7. The suit in O.S.No.195 of 2010 has been filed by the respondents before the District Munsif Court, Tambaram, seeking a declaration that sale deeds executed in favour of the petitioners by the first defendant in the suit, is null and void and they have also sought for consequential injunction restraining the respondents as well as the first defendant in the suit from further encumbering the suit schedule property.

8. The petitioners are admittedly, the subsequent purchasers, who purchased the property through sale deeds executed by the first defendant in the suit, who claimed to be the power agent of Thangam, the mother of respondent Nos.1 to 4. The respondent Nos. 1 to 4, who are the legal heirs of Thangam, have disputed the execution of sale deeds by the first defendant in the suit, to the petitioners.

9. The petitioners, who are defendant Nos.2 to 6 in the suit, have also filed the written statement in O.S.No.195 of 2010 filed by

respondent Nos. 1 to 4. In the written statement, they have categorically pleaded that: (a) the suit filed by respondent Nos. 1 to 4 is barred by law of limitation, (b) the suit is undervalued and (c) the suit is barred by the law as it is hit by Section 202 of the Indian Contract Act. Only on these grounds, the petitioners also filed an application under Order VII Rule 11 (b) & (d) C.P.C., seeking rejection of the plaint filed by respondent Nos. 1 to 4 in O.S.No.195 of 2010.

10. The trial Court, by a detailed order, has dismissed I.A.No.748 of 2012 in O.S.No.195 of 2010 filed by the petitioners under Order VII Rule 11 C.P.C. The grounds raised by the petitioners for rejection of plaint under Order VII Rule 11 C.P.C has also been raised by the petitioners in the written statement filed by them in O.S.No.195 of 2010. The said fact is also not disputed by the learned counsel appearing for respondent Nos. 1 to 4.

WEB COPY

11. However, both the learned counsels submit that they are not aware as to whether the issues were framed by the trial Court on (a) limitation (b) undervaluation of the suit and (c) the suit barred by law as

it is hit by Section 202 of the Indian Contract Act. Even though those defences were specifically raised by the petitioners in their written statement in the suit, the instant Revision has been filed in the year 2013. In the normal circumstances, an application under Order VII Rule 11 C.P.C for rejection of plaint is taken up for consideration by the trial Court at the earliest stage even before the written statements are filed by the defendants in the suit.

12. In the instant case, the impugned order rejecting Order VII Rule 11 C.P.C. application, was passed on 28.01.2013 and because of the pendency of the Civil Revision Petition against the dismissal of Order VII Rule 11 C.P.C. application, the suit is still kept pending on the file of the trial Court. Without going into the merits of the impugned order passed by the trial Court, this Court is of the considered view that the suit will have to be disposed of expeditiously. However, the trial Court will have to consider the defences raised by the petitioners in their written statement, which includes the grounds raised by them as stated supra in their application filed under Order VII Rule 11 C.P.C in I.A.No.748 of 2012 in O.S.No.195 of 2010. Since the learned counsel appearing on both sides are also unable to inform this Court as to

whether issues have been framed by the trial Court on the grounds raised by the petitioners in Order VII Rule 11 C.P.C. application, the trial Court will have to necessarily frame the issues on those grounds as well as the grounds, which the petitioners have categorically pleaded in their written statement filed in O.S.No.195 of 2010.

13. In the light of the above observations, the following directions are passed by this Court:-

(a) The trial Court will have to frame the following issues in addition to other issues, if not already framed.

(i) Whether the suit filed by respondent Nos.1 to 4 is barred by law of limitation?

(ii) Whether the suit filed by respondent Nos.1 to 4 is undervalued for the purpose of payment of Court fee?

(iii) Whether the suit filed by respondent Nos.1 to 4 is barred by law and whether it is hit by provisions of Section 202 of the Indian Contract Act?

(b) The trial Court is directed to dispose of the suit after

framing of issues, if already not framed and after recording oral and documentary evidence produced by the parties in the suit, within a period of six (6) months from the date of receipt of a copy of this order.

With the aforementioned directions, the instant Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.01.2019

Index : Yes/No

Internet : Yes/No

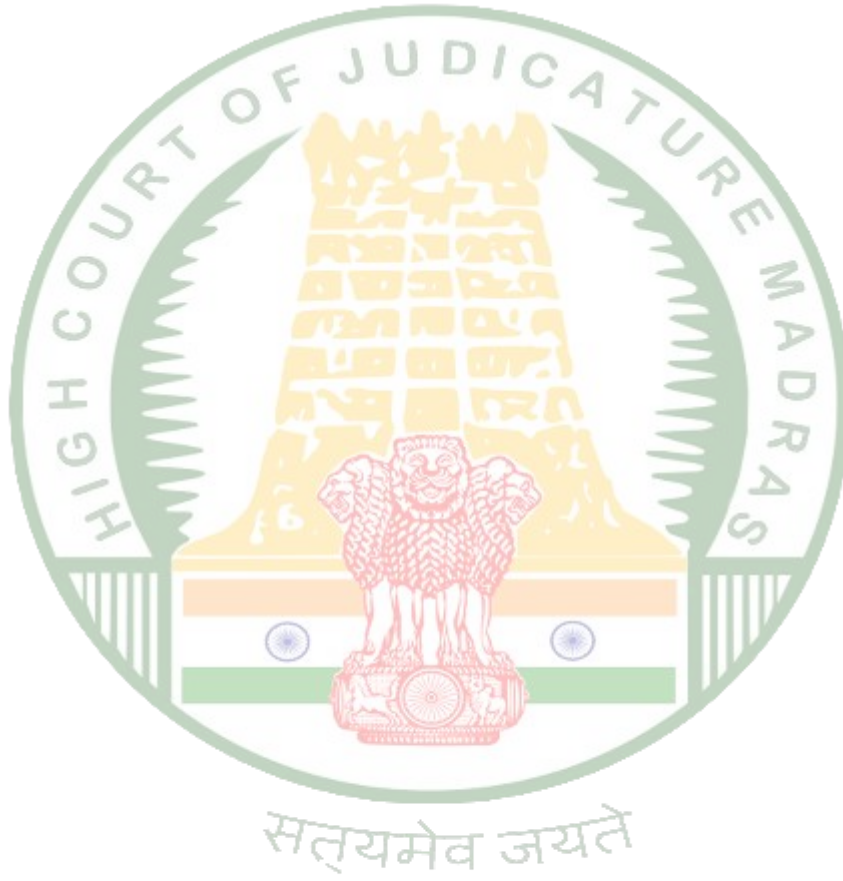
Speaking Order : Yes/No सत्यमेव जयते

asi/ggi

WEB COPY

To

The District Munsif, Tambaram.



WEB COPY

ABDUL QUDDHOSE, J.

asi



C.R.P.(PD) No.3694 of 2013
and M.P.No.1 of 2013

WEB COPY

21.01.2019