

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD) No.2898 of 2016
and C.M.P.No.14769 of 2016

1.S.Sampath
2.S.Rajasekaran

... Petitioners

Vs.

1.Sivakami
2.Saravanakumar

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 08.03.2016 made in I.A.No.1168 of 2015 in O.S.No.36 of 2012 on the file of the District Munsif, Mettur.

For Petitioners : Mr.A.V.Arun

For Respondents : Mr.K.Selvaraj

ORDER

This revision has been directed against the fair and decretal order passed in I.A.No.1168 of 2015 in O.S.No.36 of 2012, by order dated 08.03.2016, on the file of the District Munsif Court, Mettur.

2.Before the trial Court, the revision petitioners were the defendants against whom the respondents/plaintiffs filed a suit for partition where one of the prayer sought for is to declare the sale deed dated 20.05.2009 executed by the defendants 1 and 2 in favour of the 3rd defendant as null and void.

3.In the said suit, it seems that, initially the defendants have been set exparte and subsequently, they seems to have filed a petition and exparte order have been set aside and accordingly, when the suit is posted for trial, at that stage, the revision petitioners had come out with the present application i.e., I.A.No.1168 of 2015 under Order VII Rule 11 C.P.C. to strike off the plaint. The said application since has been rejected, through the impugned order, feeling aggrieved over the same, the present revision has been filed.

4.Heard the learned counsel for the revision petitioners as well as the learned counsel for the respondents.

5.The said application under Order VII Rule 11 was filed before the Court below on the mere ground of limitation, as

according to the revision petitioners/defendants, the main prayer sought for in the suit is for declaration of the document dated 20.05.2009 as null and void and the said relief has not been sought for by the plaintiffs within the limitation period of three years.

6. Admittedly, the sale deed dated 20.05.2009 along with the suit has been filed some time in January, 2012. Assuming that, the suit has been filed in January, 2012, it can easily be construed that within three years from the date of sale deed, the said suit has been filed. Therefore, prima facie this Court is of the view that, the plea raised by the revision petitioners/ defendants to strike off the plaint on the ground of limitation cannot be entertained.

7. That apart, the learned Judge, in the impugned order, has given detailed reasons as to why the said application under Order VII Rule 11 filed by the revision petitioners has to be rejected.

8. Having gone through the said impugned order, this Court is of the view that, there is absolutely no infirmity, perversity attached with the said order and moreover, the only ground raised by the revision petitioners to strike off the plaint is limitation, which, in the considered opinion of this Court, prima facie may not be correct, in view of the date of the sale deed and the date of the plaint. In that view of the matter, the revision petitioners do not have any leg to stand to pursue their application under Order VII Rule 11 C.P.C. to reject the plaint. Therefore, the said impugned order rejecting the said application is perfectly in order. In that view of the matter, this Court feels that, this revision petition deserves to be rejected, accordingly, the same is rejected.

9. In the result, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

The District Munsif, Mettur.

+1cc to Mr. A.V. Arun, Advocate SR.No.93716

+1cc to Mr. K. Selvaraj, Advocate Sr.No.93666

AKM/10.03.2020 /2P-4C/

C.R.P. (PD) .No.2898 of 2016