



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (PD) (MD) No.186 of 2019

WEB COPY

D.Pandiammal

... Petitioner

vs.

- 1) S.Nevil Jonathan
- 2) Ida Jenifer
- 3) Pearlin Joshua
- 4) Shalini Barnabash
- 5) Shyla Nataraj

... Respondents

Petition filed under Article 227 of the Constitution of India, to direct the Principal District Judge, Madurai, to number and take up the suit in A.No.15784 of 2018 in O.S.No.Unnumbered of 2018.

|                |                              |
|----------------|------------------------------|
| For Petitioner | : Mr.P.Ganapathi Subramanian |
| For R1 to R3   | : Mr.T.Thamizharasan         |
| For R4         | : No appearance              |

**ORDER**

This revision petition is filed to direct the Principal District Judge, Madurai, to number and take up the suit in A.No.15784 of 2018 in O.S.No.Unnumbered of 2018.

2. According to the petitioner, one late Suresh Kumar, father of respondents 1 and 2, husband of 3<sup>rd</sup> respondent and brother of respondents 4 and 5, entered into a sale agreement dated 16.07.2011 with the revision petitioner/plaintiff agreeing to sell the suit property for a sale consideration of Rs.77,00,000/-. On the date of sale agreement, Suresh Kumar received a sum of Rs.1,80,000/- as advance from the petitioner. Thereafter, the respondents 4 and 5 who are the sisters of Suresh Kumar filed a partition suit claiming share in the suit property. While so, on 13.12.2013, Suresh Kumar died. Thereafter, till 13.04.2015, on various occasions, the respondents 1 to 3 received part of sale consideration amount from the petitioner. Thereafter, on 23.07.2018, the respondents 1 to 3 refused to execute the sale deed and forcibly attempted to take the sale agreement from the petitioner and attempted to sell the suit property to a third party. Hence, the petitioner has filed the above suit for specific performance, but the Court below rejected the plaint as barred by limitation on the following reasons:-

'1. A perusal of the sale agreement clearly shows that last transaction was made on 13.04.2015. Three months time period is given for the performance of contract which lapsed on 13.07.2015.

2. As per Article 54 of the Limitation Act, the suit must be filed within three years from 13.07.2015.



3. Therefore, the plaintiff ought to have filed the suit on 13.07.2018.

4. Hence, the suit is clearly barred by law of limitation. Therefore, the plaint is rejected.''

3. Learned counsel for the petitioner would submit that there is no date mentioned in the sale agreement dated 16.07.2011 for executing the sale deed and therefore, well within three years from 23.07.2018, the date on which, respondents 1 to 3 refused to execute the sale deed, the suit has been filed and therefore, the suit is maintainable, but the Court below erroneously calculating three years mentioned under Article 54 of the Limitation Act, from 13.04.2015, the date on which, last transaction was made by the petitioner, rejected the plaint without even numbering the same. Thus, the learned counsel prays for direction to number the suit and decide the same on merits.

4. Heard the learned counsel for the petitioner and perused the records.

5. Without going into the merits of the case, in my considered opinion, the question of limitation in the circumstances of the above case based on the pleadings *prima facie* appears to be a mixed question of fact and law and therefore, the learned Judge ought to have numbered the suit and decided on merits. Therefore, the order dated 20.11.2018 in A.No.15784/2018, rejecting the plaint is liable to be set aside and accordingly set aside. The learned Judge is directed to number the suit and to decide the same on merits. The question of limitation shall also be decided by the learned Judge after numbering the suit.

With the above direction, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To  
The Principal District Judge,  
Madurai.

+1 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate SR-68954.  
+1 CC to M/s.S.THAMIZHARASAN, Advocate SR-68947.

**C.R.P(PD) (MD) No.186 of 2019**