



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.839 of 2019

and

CMP(MD)No.5047 of 2019

WEB COPY

1)Jeeva Rajaguruvan

2)Rajaguruvan

... Petitioners/Petitioners/
Defendants 1 & 2

vs.

1) Mariyapackiam

2) Josephin Arokiamary Rani

3) David Chandrakumar ...Respondent 1 to 3/Respondent 1 to 3/
Plaintiff 1 to 3

4) The Joint Registrar NO.II,
O/o.Joint Registrar Office,
Virudhunagar Town,
Virudhunagar Taluk & District.

... 4th Respondent/4th Respondent
/3rd Defendant

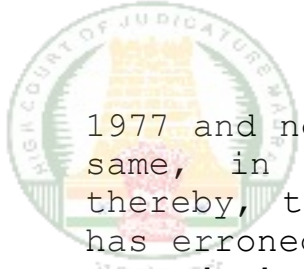
Petition filed under Article 227 of the Constitution of India, Civil Procedure Code, against the fair and decreetal order dated 05.07.2017 passed by the learned District Munsif, Virudhunagar, made in I.A.No.777 of 2016 in O.S.No.46 of 2016.

For Petitioners : Mr.S.Kiruba Vijay Anand

ORDER

Against the dismissal of the petition filed for rejection of the plaint, the defendants 1 and 2 have filed this revision.

2.Learned counsel for the petitioners/defendants 1 and 2 would contend that the petitioners purchased the suit property from the respondents 1 to 3 for a sum of Rs.25,000/- by a sale deed dated 21.05.1997 registered as Document No.1235/1997 and thereafter, they also obtained patta in their name and enjoying the suit property. While so, the respondents 1 to 3 as plaintiffs filed the present suit in O.S.No.46 of 2016 on the file of the District Munsif, Virudhunagar, for permanent injunction and to declare the above sale deed in Document No.1235/1997 as null and void on the ground that the above sale deed was fraudulently executed. Therefore, the petitioners filed the present petition to reject the plaint on the ground that having executed the sale deed in the year 1997, after a period of more than 8 years, the petitioner has filed the above suit which is clearly barred by limitation and further, the value of the suit property was at Rs.25,000/- during



1977 and now it is Rs.5,000/- per square feet, but suppressing the same, in the plaint, the suit property has been undervalued, thereby, there is a deficit court fee. However, the Trial Court has erroneously dismissed the petition to reject the plaint on the ground that the question of limitation and the deficit court fee can be decided in the main suit. Thus, the learned counsel prayed to allow this revision.

3. Heard the learned counsel for the petitioners.

4. Perusal of record shows that the learned Judge on the question of deficit of court fee held that unless and until the plaintiffs are given liberty to pay the deficit court fee, the Court cannot reject the plaint at the threshold. If the opportunity is given and the plaintiffs did not pay the court fee, then it is for the court to reject the plaint and further, the defendants 1 and 2/revision petitioners did not adduce any evidence to prove that the value of the suit property is increased. As far as the limitation is concerned, it has been specifically contended by the plaintiffs that they came to know about the sale deed of the year 1997 only on 16.10.2012 and therefore, the suit has been filed within three years therefrom, but the revision petitioners/defendants would contend that the plaintiffs were aware of the sale deed even prior to that date and therefore, the suit is barred by limitation. As far as the limitation is concerned, the learned Judge found that there is a mixed question of law and fact that can be decided only in the main suit and therefore, had dismissed the petition to reject the plaint, where I do not find any infirmity.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To
The District Munsif, Virudhunagar.

+ 1 CC TO Mr.D.Rameshkumar, ADVOCATE IN SR No.69649

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