



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CRP(MD)No.1786 of 2019

WEB COPY

P.Arockiyasamy

... Petitioner /Plaintiff

versus

1. D.Santra

2. Pandian

3. The IV-Joint Sub-Registrar,
No.IV, Joint Sub-Registrar Office,
Palanganatham,
Madurai Town.

... Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Return endorsement of plaint in unnumbered O.S.SR.No.11870 of 2019 dated 24.09.2019 passed by the learned Principal Subordinate Judge, Madurai.

For Petitioner : M/s.D.Srinivasaragavan

ORDER

The revision petitioner filed a suit as against the respondents herein, before the Sub Court, Madurai, seeking the following relief:

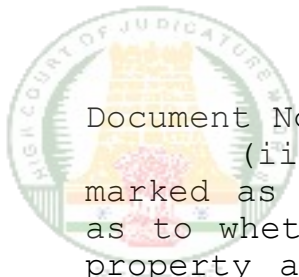
(i) declaring that the plaintiff is the absolute owner of the suit property and also for permanent injunction restraining the 1st and 2nd defendants, who are the respondents 1 and 2 herein, from disturbing his peaceful possession and enjoyment of the suit property.

(ii) declaring that gift deed created in favour of the 1st defendant which was registered as Document No.10203, dated 16.11.2009 before the IV Sub Restriction Office, Arasaradi, Madurai is null and void;

(iii) for permanent injunction, restraining the 3rd defendant from registering any documents or sale deed if any submitted by the 1st defendant in respect of the suit property.

2. It is the grievance of the revision petitioner that while he filed the suit on 24.07.2019, on the same day, the plaint was returned by the learned Principal Sub Judge, Madurai, raising the following queries:

(i) When the suit schedule property was mentioned as a vacant land, however, the building plan approval has been marked as



Document No.9.

(ii) Bills for electricity connection and property tax were marked as Document No.24 and Document No.22 respectively. Explain as to whether a building has been constructed in the suit schedule property and also produce the document as mentioned in the prayer No.2

(iii) Explain as to how the prayer No.3 could be sustained.

(iv) Whether the prayer No.2 as sought for is within the time limit?

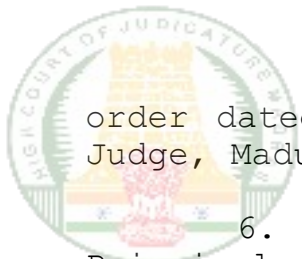
(v) No details about the person who wrote the gift deed as mentioned in the prayer No.2 is provided.

Thereafter, the revision petitioner, after giving explanations to those queries and filing list of documents, represented the said plaint. However, the learned Judge on 26.08.2019 again returned the plaint stating that previous returns still holds good. The revision petitioner has made elaborate answer by giving citations with regard to the limitation aspect and represented the plaint on 19.09.2019. However, the Court below, without adverting to the Judgments cited by the revision petitioner, returned the plaint on 24.09.2019 by saying that previous returns still holds good. Challenging the same, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioner submitted that the revision petitioner had duly rectified the errors as mentioned by the Court below, however, the Court below returned the plaint two times due to non-rectification of errors. The learned counsel further submitted that with regard to the period of limitation, the revision petitioner cited the order of this Court passed in CRP(PD)(MD) No.385 of 2018, dated 28.04.2018 and CRP(MD) No.1888 of 2016 dated 05.09.2018, wherein, this Court held that the question of limitation is a mixed question of fact and law. Therefore, the question of limitation can be decided only after numbering the suit and not before numbering the suit. Therefore, returning the plaint is unreasonable.

4. A perusal of the records reveals that the Court below raised a query of limitation with respect to prayer No.2. The prayer No.2 sought for in the suit is for a declaration, declaring that gift deed created in favour of the 1st defendant which was registered as Document No.10203, dated 16.11.2009 before the IV Sub Restriction Office, Arasaradi, Madurai, is null and void.

5. As rightly contended by the learned counsel appearing for the revision petitioner, it is settled position of law that the question of limitation is a mixed question of fact and law and that the same can be decided only after hearing both sides. Without numbering the suit, the parties cannot be heard. But, the trial Court, without considering the explanations and citations given by the revision petitioner with regard to the queries raised, had returned the plaint and refused to number the suit. Therefore, the



order dated 24.09.2019 passed by the learned Principal Subordinate Judge, Madurai, is not sustainable.

6. For the reasons aforesaid, this Court directs the learned Principal Subordinate Judge, Madurai, to number the suit and after hearing both sides, dispose of the suit, on merits and in accordance with law, as expeditiously as possible.

7. With the above direction, the Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Subordinate Judge,
Madurai.

2. The Section Officer,
VR Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai
(to return the original papers to the revision petitioner)

+1 CC to Mr.D.SRINIVASARAGAVAN, Advocate (SR-91441[F] dated 04/10/2019)

CRP(MD)No.1786 of 2019
04.10.2019

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MK (22.10.2019) 3P 5C