

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.3638 of 2012

and

MP.No.1 of 2012

A.E.Gopalan Nambiar,
Proprietor, Indian Coffee House,
Ooty-Mysore Road,
Gudalur Bazaar Post-643 212,
Nilgiris District.

...Petitioner/Plaintiff

Vs.

1.Nirmala Thambi
2.Hema Mukundan
3.Prema Veerarajan
4.Usha Thambi
5.Dr.M.J.Churian

...Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree made in OSCFR.No.3235 of 2011 dated 15.12.2011 passed by the Subordinate Judge, Uthagamandalam.

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For Petitioner : Mr.Silambarasan

for M/s.PROFEXS ASSO

For Respondent : Mr.Arun Anbumani for R3

ORDER

This Civil Revision Petition has been filed to set aside the judgment and decree made in OSCFR.No.3235 of 2011 dated 15.12.2011 passed by the Subordinate Judge, Uthagamandalam.

2. The petitioner filed a suit for specific performance against the respondents herein in OSCFR.No.3235 of 2011 on the file of the Sub-Judge, Nilgiris, Uthagamandalam. The suit was rejected on the ground that it is barred by limitation.

3. The learned counsel appearing for the petitioner fairly conceded that in the sale agreement dated 19.06.1987, six months time was fixed for completion of the sale. Though the petitioner was always ready and willing to pay the balance sale consideration to get the sale deed in his favour, the respondents 1 to 4 have not come forward to fulfill their obligation. Since various proceedings are pending in respect of the suit property in various Courts, the petitioner could not file the suit in time. The

Trial Court without considering these facts, dismissed the suit holding that the suit is barred by limitation. Hence, the present petition has been filed.

4. The learned counsel appearing for the respondents would submit that the sale agreement was entered on 19.06.1987 and six months time have been fixed for performance of the contract. If the contract was not performed within the stipulated time, the petitioner/plaintiff ought to have filed the suit within 3 years from the date of expiry of time. Whereas, the petitioner has filed the suit after 20 years, without giving any proper reason for the delay. Though various litigations pending in respect of the suit property, there is no injunction or stay prevented the plaintiff to file the suit in time. Hence, it is clearly barred by limitation. The Trial Court has rightly rejected the suit and there is no merit in the petition. Therefore, this petition may be dismissed.

5. Heard the learned counsel appearing on both sides and perused the materials available on record.

6. It is seen that the petitioner filed the suit for specific performance against the respondents based on the agreement of sale dated 19.06.1987. In the sale agreement itself, it is stated that the balance sale consideration has to be paid within six months from the date of agreement. In Article 54 of the Limitation Act, it is clearly stated that the period for enforcing the right of specific performance is three years from the date of cause of action. As the suit was filed only in the year 2011, i.e., after 20 years, it is clearly barred by limitation.

7. It is the submission of the learned counsel for the petitioner that due to pendency of various litigations, he could not file the suit in time. But in none of of the proceedings, injunction or stay was granted preventing the petitioner to file the suit. Under these circumstances, the suit filed after two decades, is clearly barred by limitation. However, against the order of rejection of plaint, appeal will lie not Revision. Since, rejection of plaint is a decree, hence aggrieved parties can file only regular appeal before the Competent Court not Revision before this Court.

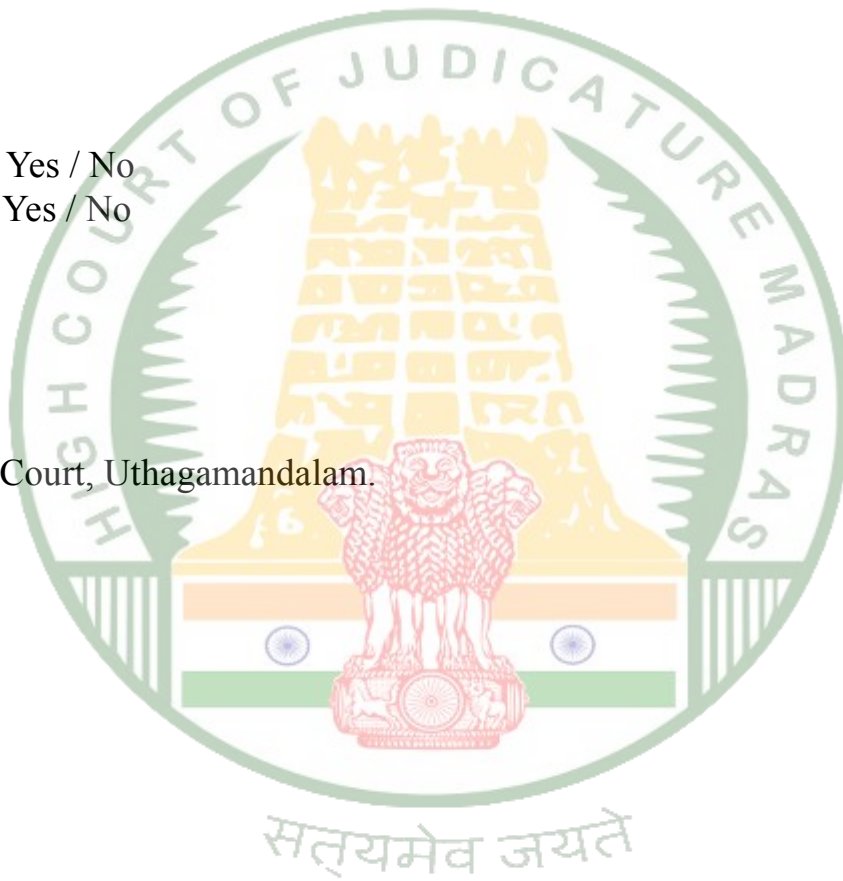
8. Hence, this Civil Revision Petition stands dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is also closed.

28.08.2020

Internet : Yes / No
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To

The Sub-Court, Uthagamandalam.



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