

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.2691 of 2018
& C.M.P.No.15959 of 2018

M.Sathiyaseelan

... Petitioner

Vs.

R.Vadivambal

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the dismissal order dated 05.09.2017 passed in IA No.280 of 2014 in OS. No.58 of 2014 passed by learned Additional District Judge, Chengalpattu.

For Petitioner

: Mr.V.Manisekaran
for M/s.R.Krishnakumar

For Respondent

: Mr.M.Babu Muthu Meeran

ORDER

This matter is taken up for hearing through Video-Conferencing.

The defendant in OS No.58 of 2013 has come up with this Revision, challenging an order passed by the learned Additional District Judge, Chengalpattu, dismissing his application, filed under Order 7 Rule 11 of the Code of Civil Procedure, to reject the plaint on the ground that it is barred by limitation.

2. The suit is one for declaration of the plaintiff's title and for a declaration that the Sale Deed dated 13.05.1991 executed by J.Susainathan and others is invalid and for a consequential injunction. Upon service of notice, the defendant filed an application seeking rejection of plaint on the ground that the suit is barred by limitation. The defendant would aver that the plaintiff filed an earlier suit in OS No.207 of 2009 (OS No.135 of 2007 on the file of Sub Court, Chengalpattu) seeking a permanent injunction restraining the defendant from interfering with his peaceful possession.

3. The said suit was resisted by the defendant denying the title of the plaintiff and claiming title under the Sale Deed of the year 1991. The said suit came to be dismissed by the Sub Court Tambaram, reserving the liberty to the plaintiff to sue for declaration on 12.12.2012. Therefore, according to the defendant, since he had disputed the title of the plaintiff even in the year 2007, the plaintiff ought to have filed the suit for declaration within three years and therefore, the present suit filed in the year 2013 is barred by limitation.

4. This application was resisted by the plaintiff contending that since the Sub Court in the earlier suit had granted liberty to the plaintiff to seek relief of declaration the suit cannot be said to be barred by limitation.

5. The learned Additional District Judge, Chengalpattu, who heard the application concluded that though the Court has the power to reject the plaint on the ground that the suit is barred by limitation, such power can be exercised only in cases where the suit is, on the face of it, barred by limitation. If the question of limitation is to be decided on facts, upon

evidence being let in, then the question of limitation cannot form the basis for rejection of plaint. On the said conclusion, the learned Additional District Judge dismissed the application. Aggrieved the defendant is on Civil Revision Petition.

6. I have heard Mr.V.Manisekaran, learned counsel appearing for Mr.R.Krishnakumar, for the petitioner and Mr.M.Babu Muthu Meeran, learned counsel appearing for the respondent.

7. Mr.V.Manisekaran, learned counsel appearing for the petitioner would vehemently contend that the Additional District Judge, was not right in dismissing the application for rejection of plaint. He should have seen that the written statement in OS No.207 of 2009 was filed before the Sub Court, Chengalpattu, even in the year 2007, wherein the petitioner has specifically denied the title of the plaintiff. Therefore, the plaintiff ought to have sought for the relief of declaration within a period of three years from the date of such denial. According to Mr.Manisekaran, the liberty granted by the Trial Court in the earlier proceeding cannot extend the limitation for

the suit.

8. I have considered the rival submissions.

9. The learned Additional District Judge has not rejected the claim of the petitioner that the suit is barred by limitation. He has only said that in the light of the fact that it involves examination of evidence and the effect of the liberty granted by the Trial Court in the earlier suit viz., OS No.207 of 2009, the said question cannot form basis for rejection of the plaint. He has only postponed the decision on the issue to the trial of the suit so that it can be conveniently decided after evidence is let in by the parties.

10. I do not see any illegality or irregularity in the order of the Trial Court. Once the question of limitation involves consideration of evidence and the plea taken in the written statement also, the same cannot form the basis for rejection of the plaint. The Civil Revision therefore fails and it is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

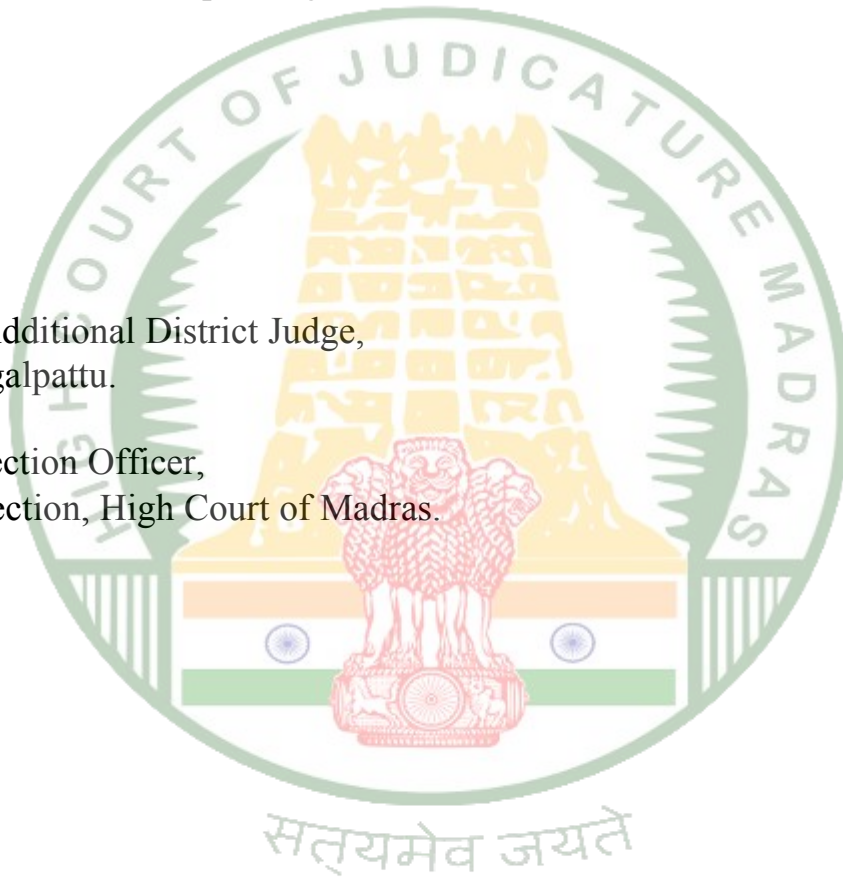
09.10.2020

jv

Index:Yes/No
Internet:Yes/No
Speaking Order/Non Speaking order

To

1. The Additional District Judge,
Chengalpattu.
2. The Section Officer,
V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

jv



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