

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(NPD)No. 2869 of 2018

and

C.M.P.No. 16881 of 2018

K.A.Kanagaraj

...Petitioner

Vs.

1.M.Revathy

2.Krithika

3.Tharanya

4.K.Raju

5.R.Sathishkumar

6.R.Priya

7.R.Amaravathy

...Respondents

Prayer: Civil Revision Petition filed under Article 115 of C.P.C., against the fair and decreetal orer dated 20.12.2017 in I.A.No. 748 of 2013 in O.S.No. 426 of 1998 on the file of the I – Additional Sub-Ordinate court, Salem.

For Petitioner : Mr.D.Shivakumaran

For Respondents : No Appearance

ORDER

The plaintiff in O.S.No.426 of 1998 on the file of the Sub-Court,

Salem has come up with this revision challenging an order of the Trial Court allowing an application in I.A.No. 748 of 2013 filed by the defendants, seeking rescission of the contract under Section 28(2) of the Specific Relief Act.

2. The suit laid by the plaintiffs for specific performance was decreed on 10.01.2005. As per the said decree, the plaintiff was directed to deposit the balance of sale consideration within two months from the date of the decree that is on or before 10.03.2005. Admittedly, the plaintiffs did not deposit the balance of sale consideration within time allowed by the Court and did not seek extension of time. However, they managed to deposit the balance of sale consideration after a delay of more than 1 ½ years on 15.12.2006. Though they had deposited the balance of sale consideration on 15.12.2006, the plaintiffs did not chose to levy execution till 2013. The plaintiffs ultimately, filed an execution petition in E.P.No. 200 of 2013. Upon service of summons in the said execution petition, the defendants came out with an application in I.A.No. 748 of 2013 seeking rescission of the contract.

3. The said application was resisted by the plaintiffs mainly on the ground it is barred by limitation. The Trial Court rejected the said claim and allowed the application rescinding the contract. Hence, this revision. I have heard Mr.D.Shivakumaran, learned counsel for the petitioners.

4. Mr.D.Shivakumaran, learned counsel for the petitioner would submit that Article 137 of the Limitation Act would apply for an application seeking rescission of contract. Therefore, according to him, the application filed in the year 2013 beyond the period of 3 years is hopelessly barred by limitation. I have considered the submissions of the learned counsel.

5. There are some decisions which would show Article 137 would apply when rescission of the contract is sought for but starting point of the limitation under Article 137 is the date on which the cause of action to seek rescission arose. The failure on the part of the plaintiffs to deposit the money into Court within the time prescribed would give the cause of action but factually whether the defendants had notice of such failure has to be

looked into. There is nothing on record to suggest that notice was issued to the defendants for the deposit that was made on 15.12.2006. Therefore, the defendants became aware of the failure on the part of the plaintiffs to comply with the decree by depositing the balance of sale consideration into Court only upon service of notice in the execution petition. It is avered that the defendants had gathered that the money was deposited on 15.12.2006 that is, after 1 ½ years from the date fixed by the Court only when they had made a search of the court records after receipt of notice in the execution proceedings. Therefore, the starting point of limitation under Article 137 would be the date of service of summons in the execution petition. The execution petition itself was filed in the year 2013 and this application is also of the year 2013, therefore, it cannot be said that the application is belated or barred by limitation. Even otherwise, the Trial Court has rightly relied upon the judgment of the Hon'ble Supreme Court in **P.R.Yelumalai Vs. N.M.Ravi** reported in **2015 (2) CTC 559** wherein, the Hon'ble Supreme Court had held that the decree was self-operative and the suit will stand dismissed for non-compliance of the decree. If that be so, then the application for rescission of the contract itself may not be

necessary.

6. In any event, I do not see any illegality or irregularity in the order of the Trial Court to enable interference. This civil revision petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

19.11.2020

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Internet: Yes/No
Index: Yes/No
Speaking / Non-speaking

To:

The I – Additional Sub-Ordinate court,
Salem.

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R.SUBRAMANIAN, J.

KKN



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