

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.655 of 2018
and CMP No.3384 of 2018

1. Paul Christiyan (alias) Lakshmanan
2. Prabakaran
3. Mahalingam .. Petitioners

1. Sivaji Elangova
2. Sundar
3. Murugarajan .. Respondents

Vs.

सत्यमेव जयते

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 05.12.2017 in I.A.No.480 of 2017 in O.S.No.11 of 2006 on the file of I Additional Sub Court, Villupuram.

For Petitioners : Mr. M.V.Seshachari

For Respondents : Mr. K.Prabhakaran
for M/s.D.Rajasekar

ORDER

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

The defendants 1 to 3 in OS No.11 of 2006, a suit for specific performance, challenge the order of the Trial Court made in IA No.480 of 2017, an application for amendment of the plaint to include the relief of declaration that the cancellation of the sale agreement dated 09.08.2005 by the telegram dated 10.12.2005 is invalid.

2. The suit in OS No.11 of 2006 was filed for specific performance of an agreement of sale dated 09.08.2005. The date of institution of the suit was 13.02.2006. A written statement was filed by the fourth defendant in the suit on 29.06.2008. In the pre-suit notice itself, the plaintiffs' counsel had claimed that the cancellation is not valid. The cancellation is termed as an unilateral rescission of the contract in the pre suit notice dated

13.12.2005. Nearly, after 11 years from the date of the filing of the suit, the instant application was filed in IA No.480 of 2017 seeking to include a prayer for declaration that the unilateral cancellation of the agreement by the telegram dated 10.12.2005 is invalid.

3. The Trial Court upon a consideration of the law relating to cancellation of agreements and the necessity for the declaratory relief concluded that the amendment sought for would not alter the nature of the suit and hence allowed the same subject to limitation. The Trial Court also reserved the right of the petitioners/defendants to raise the plea of limitation with reference to the prayer that was added in by way of amendment.

4. I have heard Mr. M.V.Seshachari, learned counsel appearing for the petitioners and Mr.K.Prabhakaran, learned counsel appearing for M/s.D.Rajasekar, for the respondents.

5. Mr.M.V.Seshachari, learned counsel appearing for the petitioners would contend that the Trial Court was not right in allowing the application

for amendment subject to limitation. According to him, the amendment is a post trial amendment and the plaintiffs have not given any reason for not seeking the relief earlier in point of time as required by proviso to Order 6 Rule 17 of the Code of Civil Procedure.

6. Contending contra, Mr.K.Prabhakaran, learned counsel appearing for the respondents would submit that the inclusion of the prayer for cancellation will not alter the nature of the suit as one for specific performance. He would also point out that the Trial Court has preserved the right of the defendants to raise the question of limitation and therefore, they are not actually aggrieved by the order allowing the amendment.

7. I have considered the rival submissions.

8. No doubt there is some substance in the contention of Mr.M.V.Seshachari, that the proviso to Order 6 Rule 17 has not been properly complied with. However, the Trial Court has taken note of the fact that the application has been filed belatedly and has held that it is open to

the defendants to raise the question of limitation. I do not see any prejudice to the petitioners because of the amendment. I, therefore, do not think that the order of the Trial Court calls for interference at my hands under Article 227 of the Constitution of India.

9. The Civil Revision Petition therefore fails and it is accordingly **dismissed**. The right of the defendants/petitioners to raise the question of limitation is preserved. No costs. Consequently, the connected miscellaneous petition is closed.

30.09.2020

jv

Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

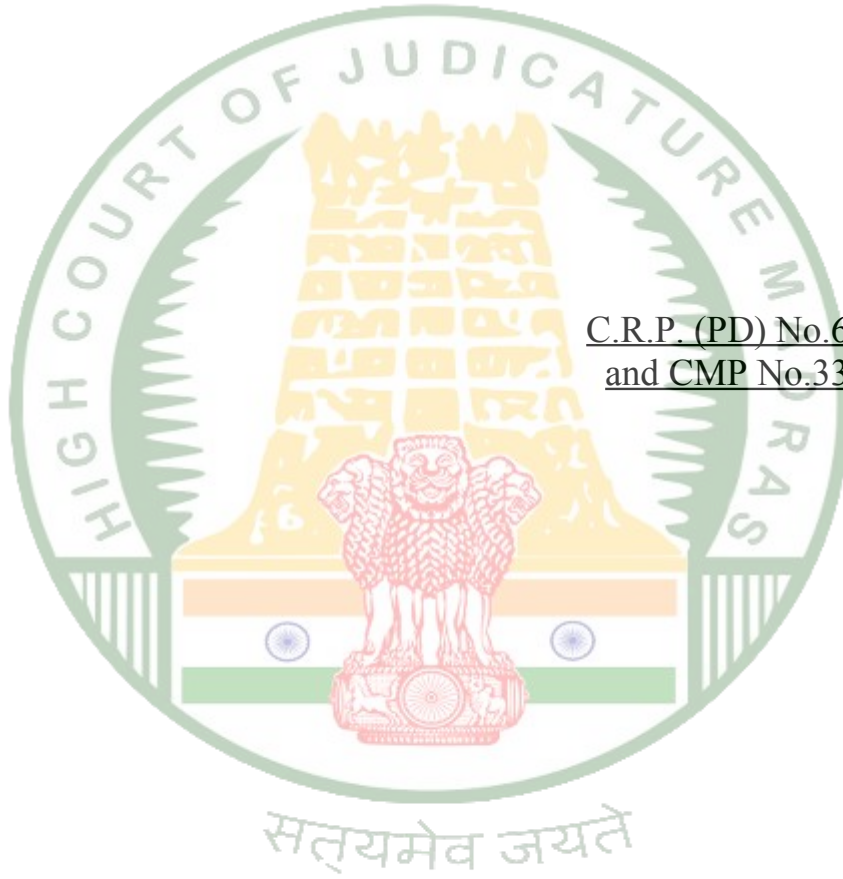
To

1. The I Additional Sub Court,
Villupuram.
2. The Section Officer, V.R.Section,
High Court of Madras.

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R.SUBRAMANIAN, J.

jv



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