

APPLICATION Nos.266 and 267 OF 2017
IN
C.S.NO.59 OF 2014

APPLICATION Nos.266 and 267 OF 2017
IN
C.S.NO.59 OF 2014

M.GOVINDARAJ, J.

Suit is for specific performance. Applicant preferred the above two applications one for amendment of pleadings and prayer and the another one for payment of Court fee towards the amended relief.

2. According to the applicant, by virtue of a sale agreement dated 27.01.2011, he paid substantial amount towards sale consideration and requested the 1st respondent to execute the sale deed. On 21.01.2014, he waited at the Registrar's office with the balance sale consideration, but the 1st respondent evaded execution of sale deed on one pretext or the other. Therefore, he issued a pre-suit notice and filed the above suit on 24.01.2014. Till the date of filing of the suit, there was nil encumbrance in the registers of the Sub-Registrar. However, it was learnt that the 2nd respondent/2nd defendant managed to get a sale deed in his favour but the fact was

APPLICATION Nos.266 and 267 OF 2017
IN
C.S.NO.59 OF 2014

suppressed throughout. Only when the first respondent filed a written statement in the above suit on 07.11.2014, it came to the knowledge of the petitioner that a sale deed was registered in favour of the 2nd respondent. Curiously, the sale deed dated 03.06.2011 registered in favour of the 2nd respondent was in respect of the property in S.No.202/2. In the year 2016, the 1st respondent executed a rectification deed rectifying the defect by mentioning the correct survey number as 204/2 instead of wrong survey number 202/2. Immediately, the petitioner filed a petition to implead the 2nd respondent in the suit which was ordered. Since, there was a sale defeating the rights of the petitioner, it has become necessary to amend the pleadings and prayer and to pay additional Court fee towards the amended prayer.

3. Per contra, the 1st respondent would contend that he entered into sale agreement for sale of the suit property only with the 2nd respondent. The petitioner was a close relative of the second respondent and in good faith the sale agreement was registered in the name of the petitioner. He received the entire sale consideration only from the 2nd respondent and has executed the

APPLICATION Nos.266 and 267 OF 2017
IN
C.S.NO.59 OF 2014

registered sale deed as early as 03.06.2011. In so far as declaration is concerned, the petitioner should have filed the suit within a period of three years i.e to say on or before 02.06.2014. The petitioner was very much aware of the sale transaction being a close relative of the 2nd respondent. Therefore, the suit is liable to be dismissed as it is hopelessly barred by limitation. However, the petitioner on false pleading with an ulterior motive to settle score with the 2nd respondent has filed the suit. Hence, he seeks dismissal of the above applications.

4. I have heard the submissions of both sides.

5. Admittedly, the sale deed executed in the year 2011 was in respect of a property situated in S.No.202/2 and hence there were no entries in the encumbrance certificate. After rectification of defects correct survey number was entered as 204/2. Therefore, conveyance appeared to have been completed only in the year 2016 by execution of the rectification deed. Whether the petitioner had previous knowledge or not and as to whether the

APPLICATION Nos.266 and 267 OF 2017
IN
C.S.NO.59 OF 2014

suit is barred by limitation or not all disputed facts to be proved in trial. The petitioner claims knowledge of the registration of sale deed only from the written statement filed by the defendant on 07.11.2014. Thereafter, he immediately impleaded the 2nd respondent as a party to the suit and filed the present petition. Since all the above disputed facts ought to be tried and for that purpose an opportunity to prove or disprove the same shall be given to the parties. Therefore, the application filed by the applicant on the basis of date of knowledge cannot be thrown out at the threshold as one without cause of action. Whether, there is cause of action to maintain the suit and whether it is filed within the limitation are being the questions of fact and law. The present applications to amend the pleadings and prayer and also to remit the proper court fee shall be allowed in the interest of justice.

In view of the above discussions, both the Application Nos.266 and 267 of 2017 in C.S.No.59 of 2018 stands allowed.

14.08.2020

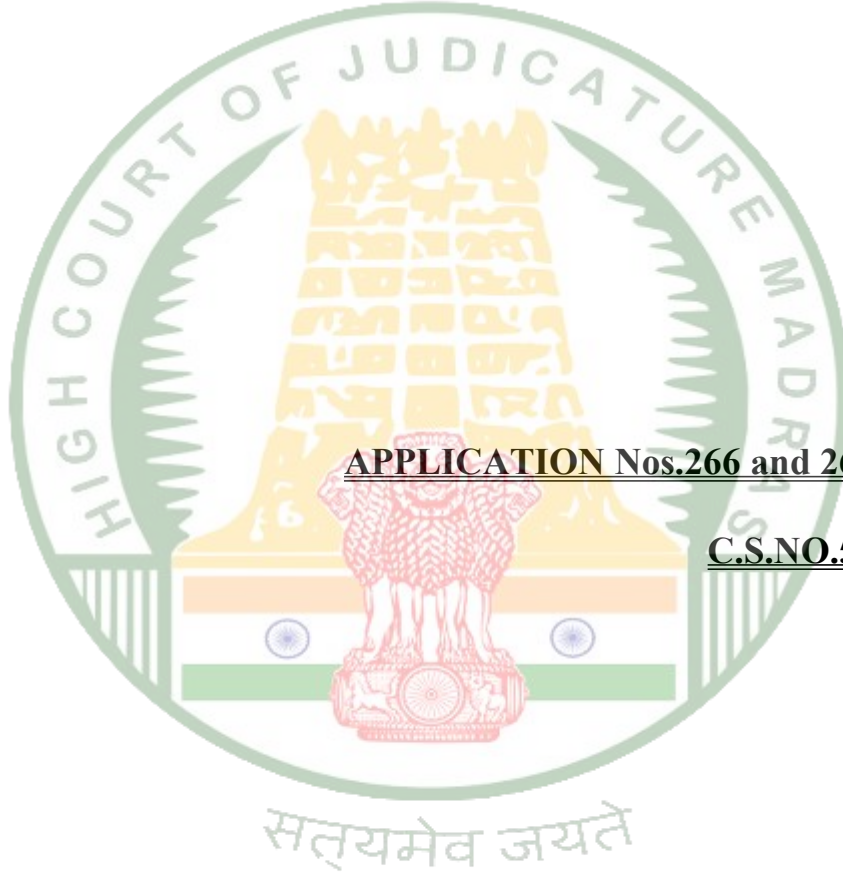
APPLICATION Nos.266 and 267 OF 2017

IN

C.S.NO.59 OF 2014

M.GOVINDARAJ, J.

kpr



APPLICATION Nos.266 and 267 OF 2017

IN

C.S.NO.59 OF 2014

WEB COPY

14.08.2020