

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .26.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD). No.3593 of 2018

Andrew Tennyson Abraham

.. Petitioner

Vs.

1. Daniel Sam

2. N.Durairaj

... Respondents

Prayer: The Civil Revision petition filed under Section 115 of the Code of Civil Procedure, against the order and decree dated 24.07.2018 made in O.S.S.R.No.15946 of 2018 on the file of the City Civil Court, Chennai.

For Petitioner : Mrs.S.Vijayalakshmi

For Respondents : Mr.R.Ramanlal

ORDER

This Revision is at the instance of the plaintiff in an unnumbered suit challenging an order rejecting the plaint without numbering. The circumstances under which the suit came to be instituted are as follows:

2. The 1st respondent in the Revision J.Daniel Sam filed a suit in O.S.No.393 of 1989 on the file of the Sub Court, Poonamallee seeking specific performance of an agreement of sale dated 09.05.1987. The said suit came to be decreed on 31.03.2004.

3. The petitioner herein who was a defendant in the suit preferred an appeal in A.S.No.93 of 2004. The appeal came to be dismissed by the learned Principal District Judge, Chengalpattu on 10.08.2006. Aggrieved, the petitioner herein filed Second appeal in S.A.No.441 of 2007 before this Court. This Court dismissed the appeal on 06.03.2015. There was an SLP also filed before the Hon'ble Supreme Court in S.L.P No.15815 of 2015 and the same came to be dismissed on 03.07.2015. Thereafter, the plaintiff launched the Execution proceedings. In the execution petition, an objection was taken to the effect that there was no petition filed under Order III Rule 2 of the Code of Civil Procedure in the earlier suit. The same was rejected by the Executing Court, against which a revision was filed before this Court in CRP (NPD) No.1295 of 2017 and the same has also been dismissed.

4. After all this, the petitioner has launched the present suit for a declaration that the Judgment and decree obtained in O.S.No.393 of 1989 confirmed up to the the Hon'ble Supreme Court were obtained playing fraud upon the Court and hence they are null and void. for recovery of possession of the suit property and for costs.

5. The trial Court by the impugned order had rejected the suit holding that the suit is not maintainable and it is also barred by limitation. It is this order that is challenged in this revision.

6. I have no doubt in my mind that the suit itself is an abuse of process of Court, intended only to delay the execution proceedings. The earlier suit was prosecuted till the Hon'ble Supreme Court and the decree has been confirmed. The present suit has been filed on the ground that the petition under Order III Rule 2 of the Code of Civil Procedure was not filed and therefore the decree itself is bad. Even assuming that order III Rule 2 of the Code of Civil Procedure was not complied with, it is only the procedural error and the same will not vitiate a decree passed in the suit.

R.SUBRAMANIAN, J.

vum

7. I do not find any error in the order of the trial Court in rejecting the suit. The Civil Revision petition therefore fails and it is accordingly dismissed. Considering the fact that the suit has been rightly rejected at the thresh hold, I desist from imposing costs.

26.08.2020

vum
Index: No
Speaking order

To

1. The City Civil Court, Chennai.

2. The Section Officer,
VR Section,
Madras High Court,
Chennai

WEB COPY

CRP (NPD). No.3593 of 2018