



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P(MD) No.1800 of 2013(PD)

and M.P(MD)No. 1 of 2013

WEB COPY

M.Moorthy

... Petitioner/Petitioner/9th Defendant

Vs.

1.Appasamy

2.Ramakrishnan

3.Govindhasamy

4.Rajagopal

..Respondents 1 to 4 /Respondents/Plaintiffs

5.S.Mariyammal

6.Mohan

7.Pabuji

8.S.Ganesan

9.S.Nagarajan

10.S.Thiruppambal

11.S.Indhira

12.Mahadevi

... Respondents 5 to 12/Respondents/
Defendants 1 to 8

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order in I.A.No.506 of 2012 in O.S.No.22 of 2010 order dated 28.06.2013 on the file of the District Munsif Court, Pattukkottai.

For Petitioner : Mr.M.Karthikeya Venkatachalapthy

For R1 to R4 : Mr.K.Kumaravel

O R D E R

This revision is filed by the 9th defendant in O.S.No.22 of 2010 on the file of the District Munsif Court, Pattukkottai challenging an order passed in I.A No.506 of 2012, which he had filed for rejection of the plaint. The said petition came to be dismissed by the trial court. Hence, this revision.

2.The brief facts are that on 16.08.1975, one Shanmuga Thevar and his wife Mariammal had entered into a certain sale agreement with the plaintiff who is arrayed as the first respondent herein. There were certain other transactions between the parties, which are very germane for deciding this revision. Suffice to state that the plaintiff was put in possession of the properties to be sold to him under the sale agreement. While so, the said Shanmuga



Thevar died and after nearly 35 years, the suit for specific performance was laid in O.S.No.22 of 2010 before the District Munsif Court, Pattukkottai. The plaintiff laid O.S.No.37 of 2009, one year prior to the filing of the suit for specific performance referred to above. The first respondent filed O.S.No.237 of 2009 against the present revision petitioner for bare injunction. It may be stated that the revision petitioner claims that he is the purchaser of the same suit property from the heirs of Shanmuga Thevar.

3.O.S.No.237 of 2009 is laid only against the revision petitioner for bare injunction whereas O.S.No.22 of 2010 was laid against the heirs of Shanmuga Thevar and the revision petitioner for specific performance. It is in this backdrop, the revision petitioner/purchaser from the heirs of Shanmuga Thevar came up with an application for rejection of the plaint on the following two grounds:

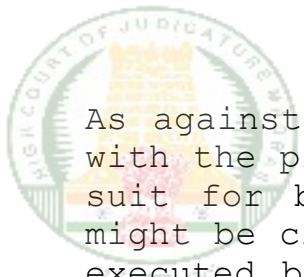
- a) that the suit is barred by limitation;
- b) that the suit for specific performance is barred under Order 2 Rule 2 of C.P.C.

4.The trial court considered both the points. So far as limitation is concerned, the plaintiff has alleged in the plaint that subsequent to the sale agreement in 1975, the vendors have obtained sale consideration from the plaintiff/the first respondent and hence, the suit is not barred by limitation. Taking this aspect into consideration, the trial court held that at the end of the day, limitation is a mixed question of law and fact and hence, the plaint cannot be rejected on the grounds of limitation. On the second point of Order 2 Rule 2 C.P.C affecting the maintainability of the present suit is concerned, the trial court has found that the cause of action in both the suits are entirely different and therefore, the present suit is not barred by limitation.

5.Heard the learned counsel for the petitioner.

6.The learned counsel strongly contended that the cause of action for both the suits in O.S. No.237 of 2009 which the first respondent had laid first for bare injunction and the present suit in O.S.No.22 of 2010 for specific performance are founded on the sale agreement dated 16.08.1975. Order 2 Rule 2 C.P.C mandates that all the reliefs, that arise out of the same cause of action, have to be sought in the same suit unless some reliefs are reserved after obtaining the leave of the court.

7.This Court is not interest with the submissions of the learned counsel. It may have to be borne in mind that the revision petitioner is a stranger or a third party to the sale agreement.



As against the revision petitioner when he attempted to interfere with the plaintiff's possession of the suit property, he moved the suit for bare injunction. The fact that the revision petitioner might be claiming right over the suit property under any sale deed executed by the heirs of Shanmuga Thevar is not a ground to hold that the cause of action which the plaintiff rests for sustaining his suit is exclusively on the sale agreement. The plaintiff in O.S.No.237 of 2009 only seeks lawful possession which he claims is traceable to the sale agreement. So far as O.S.No.22 of 2010 is concerned, it is the suit founded exclusively on the sale agreement and is laid for its enforcement. In this suit, the heirs of Shanmuga Thevar and the present revision petitioner are all made parties.

8.This Court finds that the learned Trial Judge has approached the issue most appropriately. So far as the point of limitation is concerned, that too has been correctly decided by the learned trial Judge. This Court does not find any merit in this revision and same is dismissed. The trial court is required to dispose of the suits as expeditiously as possible.

9.Accordingly, this Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM/msa

To

1.The District Munsif,
Pattukkottai.

2.The Section Officer, V.R Section -2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K. KUMARAVEL, Advocate (SR-15465[F] dated
01/09/2020)

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and M.P(MD)No.1 of 2013

31.08.2020

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