



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.39 of 2019

and

C.M.P. (MD)No.186 of 2019

WEB COPY

1.M.R.Lakshmi

2.S.Ezhil

3.M.Ravindran

4.M.Sornamani

: Petitioners/Petitioners/Defendants

.. Vs ..

1.M.Kuppammal

2.M.Vimala

: Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 15.11.2018 passed in I.A.No.389 of 2017 in O.S.No.188 of 2016 on the file of the Principal District Judge, Tiruchirappalli and to allow this Civil Revision Petition.

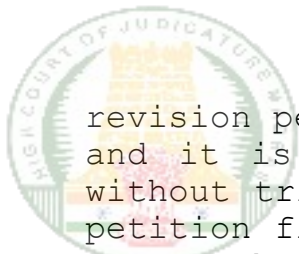
For Petitioners : Mr.Shankar Murali
For Respondents : Mr.M.Saravanan

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ORDER

This Civil Revision Petition is directed against the order passed by the learned Principal District Judge, Tiruchirappalli, in I.A.No.389 of 2017 in O.S.No.188 of 2016.

2.The revision petitioners are the defendants in the suit in O.S.No.188 of 2016. The suit in O.S.No.188 of 2016 is filed by the respondents in this Civil Revision Petition for recovery of a sum of Rs.86,70,600/- with interest at the rate of 12% per annum. The suit for recovery of money was based on independent agreements of sale in respect of the properties of the revision petitioners. Since the agreement did not go through, the respondents have filed the suit for recovery of money which was paid to the revision petitioners as advance or further payments under those agreements of sale. The revision petitioners have not filed any written statement even though the suit was filed in December, 2016. However, an interlocutory application in I.A.No.389 of 2017 was filed by the revision petitioners under Order VII, Rule 11 and Section 151 of C.P.C. on the ground that the suit claim is barred by limitation. The lower Court dismissed the said petition holding that the



revision petitioners can raise all these points at the time of trial and it is not the case where the suit can be thrown out without trial on the plea raised by the revision petitioners in the petition filed under Order VII, Rule 11 of C.P.C. Aggrieved by the same, the defendants have preferred the above Civil Revision Petition.

3. The learned Counsel appearing for the petitioners after narrating the facts relating to the sale agreements, submitted that the suit is hopelessly barred by limitation. Referring to Section 3 of the Limitation Act, he further submitted that the Court is expected to decide the issue relating to limitation and the Court can rely upon the statement in the plaint whether the suit is filed within time. A close reading of the plaint, particularly, the cause of action paragraph, this Court is unable to find any material to throw the suit on the ground of limitation. In the plaint, particularly, in the cause of action paragraph, the plaintiffs have pleaded acknowledgement of liability and hence, the question of limitation cannot be considered purely as a legal issue. It is to be noted that the issue whether the suit is barred by law of limitation can be decided either as a pure question of law, or as a mixed question of law and fact. This Court is of the view that the lower Court is right in holding that in this case the question of limitation cannot be decided as a pure question of law. Further, the revision petitioners have not even filed written statement so far. It is also stated that the interim stay granted by this Court was not extended as the revision petitioners did not cooperate for the disposal of the Civil Revision Petition. Consequently, it appears that the lower Court has set the revision petitioners *ex parte*. In such circumstances, this Court cannot entertain this Civil Revision Petition which will aid the revision petitioners to drag on the proceedings unnecessarily. However, this Court is inclined to give liberty to the revision petitioners to file written statement and to file a petition to set aside the order setting the revision petitioners *ex parte*.

4. As a result, this Civil Revision Petition is dismissed as devoid of any merits. However, the petitioners are permitted to file written statement within a period of four weeks from the date of receipt of a copy of this order. Similarly, the petitioners are also at liberty to file a petition to set aside the order setting the petitioners *ex parte*. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Principal District Court,
Tiruchirappalli.

2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.R. SUBRAMANIAN, Advocate (SR-14578[F] dated
21/08/2020)

+1 CC to Mr.K.S. SANKAR MURALI, Advocate (SR-14728[F] dated
24/08/2020)

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VB (31.08.2020) 3P 6C