

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.254 of 2019

1.C.Vanitha
2.Minor Nithin
represented by Mother and Guardian
1st petitioner C.Vanitha.
3.Kotravel ... Petitioners

Vs.

1.P.Samiyathal
2.P.Shankar
3.Vijayakumar
4.Bhuvaneswari @ Baby
5.Arunachalam Gounder ... Respondents

(Respondents 3 to 5 herein given up as unnecessary parties vide separate memo)

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 09.11.2018 in I.A. No.500 of 2017 in O.S. No.359 of 2016 on the file of the I Additional District Munsif Court, Erode.

For Petitioners : Ms. Zeenath Begum

For Respondents 1&2 : Ms. M.Abirami

3-6 : Given up

O R D E R

This petition is filed against the fair and final order passed in I.A. No.500 of 2017 in O.S.No.359 of 2016.

2. I.A. No.500 of 2017 was filed under Order 6 Rule 17 seeking amendment of the plaint, especially the prayer. The respondents 1 & 2 have filed a suit claiming the relief of permanent injunction restraining the petitioners from interfering with their peaceful possession and enjoyment of the property. The respondents 1 & 2 have also filed a petition in I.A. No.892 of 2016 under Order 2 Rule 2 CPC with a prayer to grant leave to file the present suit of permanent injunction, reserving the right to file a suit for specific performance after the disposal of O.S. No.532 of 2011 on the file of I Additional District Munsif, Erode. O.S. No.532 of 2011 on the file of the I Additional District Munsif was filed by one Chandran, husband of C.Vanitha, for demarcating the present suit property. The learned District Munsif, disagreed with the claim of the petitioners and dismissed the petition filed under Order 2 Rule 2. Therefore, the petitioners filed the present petition in I.A. No.500 of 2017, under Order 6 Rule 17 to amend the prayer for specific performance on the basis of sale agreement dated 14.11.2009, for the alternative relief of return of advance amount. The learned trial Judge, on considering the submissions of both the parties, allowed the petition. Against the said order, this civil revision petition is

preferred.

3. Learned counsel for the petitioners submitted that the relief of specific performance or the alternative relief of return of advance amount is barred by limitation and therefore, the order granting permission to amend the plaint is not correct. Therefore, he seeks to set aside the order of the learned I Additional District Munsif, Erode.

4. Learned counsel for the respondents 1 & 2 submitted that there was a dispute with regard to the demarcation of the property. Hence, the first petitioner's husband filed a suit in O.S. No.532 of 2011. He further submitted as per the sale agreement dated 14.11.2009, part of the property was sold by the first petitioner's husband to the respondents and only an extent of 40 cent remains to be sold. Due to the pendency of O.S. No.532 of 2011, this amendment petition could not be filed immediately. Hence, he prays to dismiss this petition.

5. The short question which arises for consideration is whether the proposed amendment can be allowed. It is not as though the present relief is sought now by way of amendment. Even prior to the filing of this petition, the respondents 1 & 2 filed a petition under Order 2 Rule 2 CPC seeking to defer the claim of relief of specific performance till the disposal of O.S. No.532 of 2011. It is also now claimed by the learned counsel for the respondents 1 & 2,

that part of the property covered under the sale agreement was sold to the respondents. Therefore, this Court is of the view that the issue with regard to the limitation can be considered by the trial Court by framing appropriate issue during the trial. The learned trial Judge has also considered this aspect and said that plea of limitation can be taken up by the defendants in the trial.

6. This Court finds no infirmity or perversity in the order of the learned I Additional District Munsif, Erode, in allowing the petition. Therefore, the order passed by the I Additional District Munsif, Erode, in I.A. No.500 of 2017 in O.S. No.359 of 2016 is confirmed and this civil revision petition is dismissed, accordingly. No costs. The issue with regard to the limitation for claiming relief of specific performance is kept open and to be raised by the petitioners during trial. Learned I Additional District Munsif, Erode, is directed to frame appropriate issue on the point of limitation and proceed to dispose of the case on merits and in accordance with law, as expeditiously as possible.

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Index: Yes / No
Speaking order / Non speaking order
bkn

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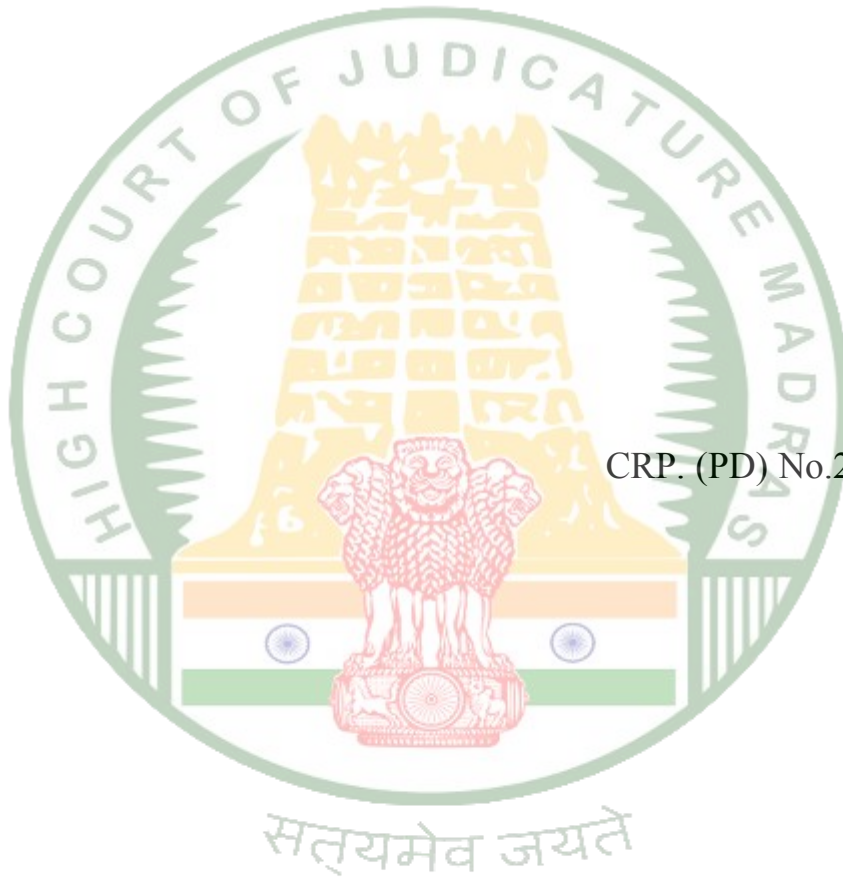
The I Additional District Munsif, Erode.



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G.CHANDRASEKHARAN. J.,

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