

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.400 of 2019
and C.M.P. No.2718 of 2019

S.Sivakumar

...

Petitioner /
3rd defendant

versus

1.P.Visalakshi
2.M.Palanisamy

...

Respondents /
Plaintiffs

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 28.11.2018 made in I.A.No.55 of 2017 in O.S.No.856 of 2016 on the file of the III Additional Subordinate Court, Coimbatore.

For Petitioner : M/s.P.Saravana Sowmiyan
For Respondents : Mr.Hari

ORDER

This Civil Revision Petition is filed to set aside the order dated 28.11.2018 in I.A.No.55 of 2017 in O.S.No.856 of 2016 passed by the learned III Additional Subordinate Judge, Coimbatore.

2. The respondents / plaintiffs filed O.S.No.856 of 2016 against the petitioner, who is the 3rd defendant and other defendants, claiming the relief of declaration that the Sale Deed dated 25.04.2008 executed by the second defendant in favour of the third defendant, is null and void, nonest and void ab initio and not binding on the plaintiffs and for other reliefs. The petitioners entered appearance and filed I.A.No.55 of 2017 under Order VII Rule 11(a),(b) and (d) read with Section 151 of C.P.C., for rejection of the plaint. Among other grounds, the main ground taken by the petitioners for filing this petition is that, the suit is barred by limitation and it is abuse of process of law.

3. The learned counsel for the petitioners drew the attention of this Court to the paragraph 7 of the plaint, wherein, it is alleged that the Sale Deed was registered inspite of the objection dated 08.02.2008 given by the first plaintiff and then, it is said patta was illegally transferred to the name of third defendant by the fifth defendant. According to the learned counsel for the petitioner, the respondents were aware of the execution of the Sale Deed even in the year 2008. However, they have not chosen to file

the suit within the time for the aforesaid reliefs. It is palpably barred by limitation. The learned counsel for the respondents prays to dismiss the petition on the ground that the suit was filed in time and there is no reason for rejecting the plaint.

4. As said supra, the suit was filed for declaring the Sale Deed dated 25.04.2008 executed by the second defendant in favour of the third defendant, is null and void, nonest and void ab initio and not binding on the plaintiffs. The main issue apparent from the averments made and counter averments made in I.A.No.55 of 2017 is that, whether this suit is barred by limitation and therefore, it has to be rejected. The question of limitation, is mixed question of fact and law. It requires the evidence, both oral and documentary, to finally conclude as to whether the claim is barred by limitation. The learned III Additional Subordinate Judge, Coimbatore, has also considered this aspect and dismissed the petition. This Court finds no reason to interfere with the order of the learned III Additional Subordinate Judge, Coimbatore.

5. In such view of the matter, this Court confirms the order passed by the learned III Additional Subordinate Judge, Coimbatore in I.A.No.55 of 2017 in O.S.No.856 of 2016 dated 28.11.2018 and this Civil Revision Petition is dismissed, with the direction to the learned III Additional Subordinate Judge, Coimbatore, to frame the appropriate issues with regard to the issue raised that the suit is barred by limitation and dispose the matter, on merits and in accordance with law, as expeditiously as possibly, preferably, within a period of six (6) months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

16.08.2021

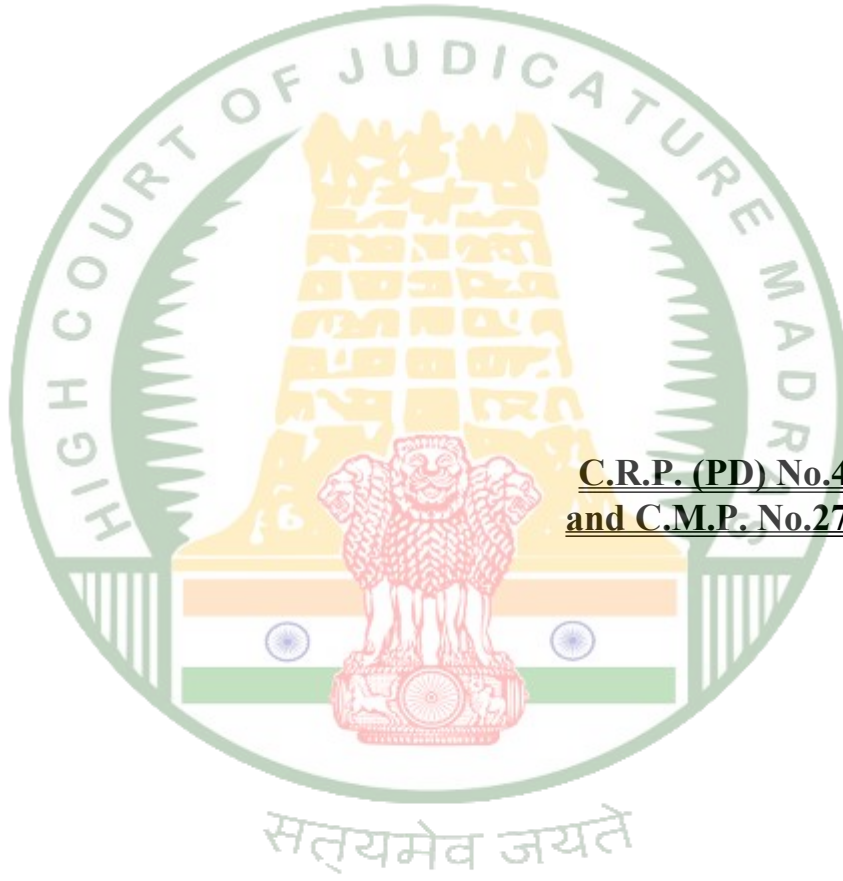
Speaking order / Non-speaking order
Index : Yes / No
sri

To

The III Additional Subordinate Judge,
Coimbatore.

G.CHANDRASEKHARAN, J.

sri



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