

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.949 of 2020
and
C.M.P. No.5141 of 2020

J. Susin, M.

... Petitioner

Vs.

1. Mrs. J. Nithya

2. Mrs. J. Sivadhanam

... Respondents

Prayer: This Civil Revision Petition filed under Section 227 of the Constitutional of India praying for to set aside the order and decree passed in I.A. No.765 of 2017 in O.S. No.118 of 2017 dated 11.12.2019 on the file of the Additional Sub-ordinate Judge, Namakkal.

For Petitioner

... Mr. M.L. Ramesh

For Respondents

... No Appearance

ORDER

This Civil Revision Petition under Section 227 of the Constitutional of India has been filed praying for to set aside the order and decree passed in I.A. No.765 of 2017 in O.S. No.118 of 2017 dated 11.12.2019 on the file of the Additional Sub-ordinate Judge, Namakkal.

2. The case of the petitioner is that the petitioner herein is the second defendant and the 1st respondent herein is the plaintiff in the suit in O.S. No.118 of 2017 on the file of the learned Additional sub-ordinate Judge, Namakkal, which has been filed seeking for declaration, declaring that the sale deed executed by the 1st defendant in favour of the 2nd defendant on 06.02.2017 is void and consequential relief against the second defendant/petitioner herein in the said suit as the Sale Agreement dated 04.10.2010 was executed by the 1st defendant/2nd respondent herein in favour of the plaintiff/1st respondent herein and the same was registered as document No.4280 of 2010. Suppressing the aforesaid fact, the 1st defendant/2nd respondent herein had executed the sale deed in favour of the 2nd defendant/the petitioner herein for the same schedule mentioned property. The defendants i.e, the petitioner herein and the 2nd

respondent herein have filed I.A.No.765 of 2017 in O.S. No.118 of 2017 under order VII Rule 11 of C.P.C. on its file for rejecting the plaint, stating there is no cause of action to entertain the said suit and the suit is barred by limitation for the period of three years as per the Limitation Act. However, the Court below dismissed the aforesaid IA by order dated 11.12.2019. Being aggrieved by the aforesaid dismissal order, the 2nd defendant in the suit has filed the present Civil Revision Petition to set aside the order of the Court below.

3. The learned counsel for the petitioner would submit that the plaintiff/1st respondent herein is only an sale agreement holder for the suit schedule mentioned property. The agreement of Sale do not confer any right, title or claim over the suit schedule property. As the suit had been filed only for a relief of declaration to declare the sale deed executed by the first defendant as Power of Attorney Holder of the Principal Sundaram in favour of the 2nd defendant as null and avoid, this relief without claiming the relief of specific performance, is not valid. Further, the sale deed dated 07.03.2012 was executed with the signature of the 1st defendant/2nd respondent herein and the plaintiff/1st

respondent herein. The same was registered on 07.03.2012. The suit had been filed in the year 2017. Therefore, the period of limitation starts from 07.03.2012, hence the suit is barred by limitation, without going in for Trial, the same could be determined. Hence, the learned Trial Judge ought to have rejected the suit, as it is barred by limitation. Since the plaintiff/1st respondent herein had entered into an agreement for sale for the value of Rs.63 Lakhs, and the Additional Sub-ordinate Court, Namakkal do not have jurisdiction to entertain the said suit. It is further submitted that as the plaintiff/1st respondent herein is one of the party in the said Sale Deed, the Court fee has to be paid to the Value of the Sale Deed. Even for filing the suit for specific performance of the Sale Agreement dated 04.10.2010 with 11 months period got expired on 04.09.2011. The suit ought to have been filed within the period of three years. ie. on or before 03.09.2014 . Therefore, there will not be any cause of action for the suit. Without considering the aforesaid reasons, the Trial Court ought not to have dismissed the I.A. No.765 of 2017. Hence, the order dated 11.12.2019 passed by the Court below is liable to be set aside.

4. Heard, the learned counsel for the petitioner and perused the material available on record.

5. On a perusal of the record, it is seen that the issue is revolved among the legal heirs and the learned counsel for the petitioner has submitted that during the hearing, the Sale deed dated 06.02.2017 executed in favour of the 2nd defendant/petitioner herein and the Sale agreement dated 04.10.2010 entered into between the plaintiff/1st respondent herein and the 1st defendant/2nd respondent herein were not produced before the Court below.

6. Having taken into consideration of the facts and circumstances of the case and the submission made by the learned counsel for the petitioner, the parties concerned are directed to produce their respective relied documents before the Court below within one month from the date of receipt of copy of this order. After receiving the said documents relied upon by both parties, the Trial Court shall decide the suit in O.S. No.118 of 2017 having taken into consideration all the aspects submitted by the learned counsel for the petitioner in this Civil Revision Petition and

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having heard on the other side and dispose of the same within a period of nine months from the date of receipt of copy of this order.

7. In the result, these Civil Revision petitions are disposed of. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

01.03.2021

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Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

To: The Additional Sub-ordinate Judge,
Namakkal.

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