

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.1235 of 2021

R.Suresh

... Petitioner / Plaintiff

Vs

1.Thajnishah Begam

2.Govindasamy

... Respondent / Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 03.02.2021 in O.S.Sr.No.216 of 2020 on the file of the District Munsif Judge, Mannargudi.

For Petitioner

Ms.S.Aswini

For Respondents

..

No appearance

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ORDER

Heard Ms.S.Aswini, learned counsel for the revision petitioner.

2.The Revision Petition filed questioning the order dated 03.02.2021 in an unnumbered Original Suit described as O.S.SR.No.216 of 2020 passed by learned District Munsif, Mannarkudi.

3.The brief background facts are that the plaintiff had originally instituted a suit against the father of the 1st defendant for recovery of money. That was filed in the year 2004 and the same was decreed in the year 2009.

4.Thereafter, an Execution Petition was also filed. That Execution Petition is still pending. The property mentioned had also been attached and I am informed that the attached property has brought for public auction. In the year 2019, though the plaintiff was in possession of the original title documents of the property, he came to know that there has been some transactions, which according to the petitioners are fraudulent in nature and had been effected subsequent to the institution of an earlier suit.

5.The present suit had been instituted on the strength of Section 53 of the Transfer of Property Act, 1882 showing as the 1st defendant the legal representative of the original borrower and as the 2nd defendant the purchaser. The suit was returned on several occasions questioning maintainability and the returns were also complied with and necessary explanations were also given.

6.However, by order dated 03.02.2021 in O.S.SR.No.216 of 2020 the learned District Munsif, Mannarkudi, appears to have rejected the plaint under Order VII Rule 11 of CPC claiming the reliefs could equally be sought in the pending Execution Petition namely, E.P.No.66 of 2013.

7.The learned counsel appearing for the petitioner, however pointed out that it is not the prerogative of the Court to direct as to where and which particular relief should be sought what is the nature of relief the plaintiff should seek. The narrow scope of examining whether the suit is maintainable or not is to examine whether there is a cause of action to institute the suit against the defendants.

8. Order I Rule 3 of CPC is a provision which states who may be joined as defendants in the suit and the said provision is as follows:-

“Order I Rule 3:- Who may be joined as defendants:-

All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

9. A reading of the same shows that if the plaintiff seeks any right to relief arising out of any transaction or series of transactions and alleges that it exists against some persons jointly or severally, then they can be joined as defendants in the suit.

10. In the instant case, the earlier suit namely O.S.No.8 of 2008 had been instituted against the father of the 1st defendant for recovery of money. He had subsequently transferred the property which was under attachment. That transfer is now claimed to be fraudulent and directly hit under Section 53 of the Transfer of Property Act, 1882. The 2nd

defendant is the transferee who had purchased the property while pending O.S.No.8 of 2008. The relief sought in the suit which had been rejected by the learned District Munsif are that the Sale Deed dated 21.06.2004 executed by the 1st defendant in favour of the 2nd defendant would not bind the plaintiff and for a further relief of injunction restraining the defendants from effecting any further encumbrance over the property.

11. The reliefs sought have a separate and distinct cause of action. It arises from transactions with respect to the property subsequent to the earlier suit. Whether the suit is within a period of limitation or not is a matter to be decided by the learned District Munsif on the basis of the averments made in the plaint. To determine, whether a plaint is maintainable or not, only the averments in the plaint should be read by the learned District Munsif along with the documents filed. Both the plaint and the documents form a composite set of pleadings of the plaintiff. Unless the suit is barred specifically by any law, Section 9 of CPC applies and the suit should be taken on file. An opportunity must be given to the plaintiff to test whatever averments had been made through evidence. Even otherwise, if the defendants enter appearance, they may

take advantage of the provision under Order VII Rule 11 of CPC. But the learned District Munsif should not wear the mantle of a counsel and enter into a discussion to examine the plaint with magnifying glasses.

12.I would rather remit the matter back to the Trial Court with a direction the learned District Munsif, Mannarkudi to number the plaint, if it is otherwise in order and issue summons to the defendants.

13.The order under Revision in O.S.SR.No.216 of 2020 is set aside and the learned District Munsif, Mannarkudi, is directed to number the plaint if it is otherwise in order and proceed in accordance with law.

14.In view of the above observations, the Civil Revision Petition is allowed. No costs.

01.07.2021

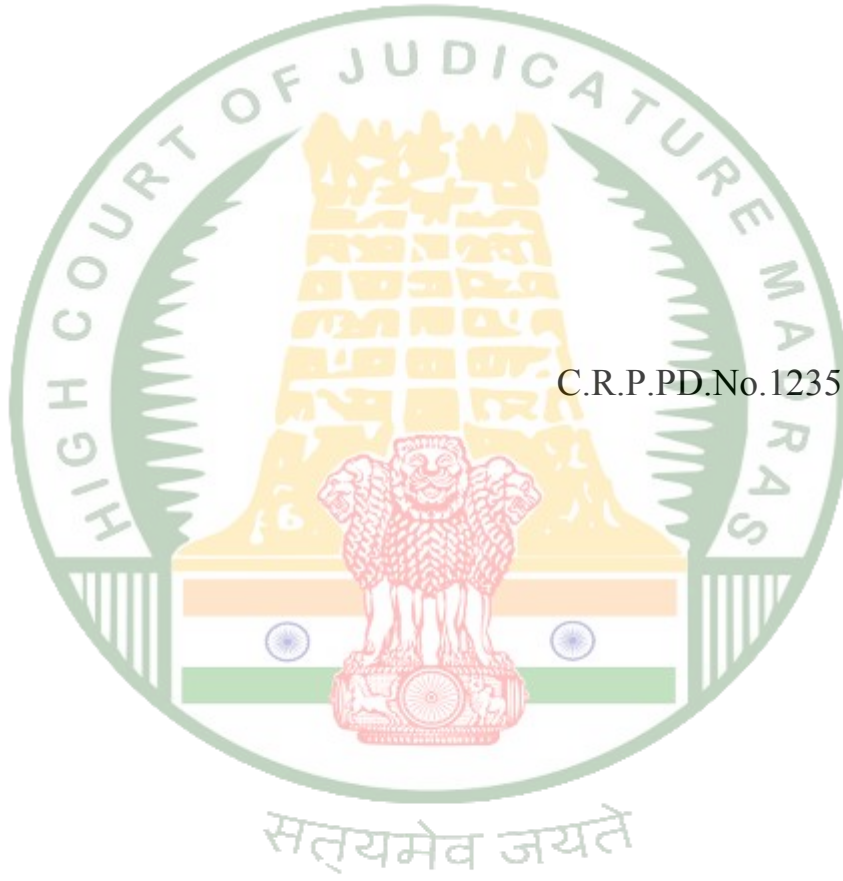
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To,
The District Munsif Court, Mannarkudi.

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C.V.KARTHIKEYAN,J.

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