

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)No.2373 of 2018
and C.M.P.No.14695 of 2018

G.Anandthapadmanaban ... Petitioner

Vs.

1. Jayalakshmi
2. P.Balu @ Chinnasamy ... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order 18.12.2017 made in I.A.No.623 of 2017 in O.S.No.6 of 2017 on the file of the District Munsif Court, Dharmapuri.

For Petitioner : Mr.P.Valliappan

For Respondents : No appearance

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 18.12.2017 passed by the learned District Munsif, Dharmapuri in I.A.No.623 of 2017 in O.S.No. 6 of 2017, thereby dismissing the petition for rejection of plaint.

2. The petitioner is the first defendant and the first respondent is the plaintiff. The first respondent filed suit in O.S.No.6 of 2017, for specific performance on the strength of the agreement for sale dated 20.10.2004. While pending the suit, the petitioner filed petition for rejection of plaint on the ground that the suit is barred by limitation and absolutely no cause of action arose to file the present suit. The said petition was dismissed by the Court below and aggrieved by the same the present Civil Revision Petition.

3. Heard Mr.P.Valliappan, learned counsel appearing for the petitioner. Though the respondents engaged counsel on behalf of them, the counsel who entered appearance before this Court viz., Mr.A.Prabhakaran, filed memo stating that the respondents have taken the bundle with change of vakalath. Thereafter, the respondents failed to engage any counsel on behalf of them before this Court. Today also no one represented on behalf of the respondents either by pleader or by person.

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4. On perusal of the plaint revealed that the first respondent filed suit for specific performance on the strength of agreement for sale dated

20.10.2004. According to the first respondent the petitioner purchased the suit property by the registered sale dated 20.06.1994. Thereafter the petitioner executed power of attorney on 18.10.2004 in favour of the second respondent herein to sell the property. On the strength of the Power of Attorney, the second respondent herein executed agreement for sale to sell the suit property for the total sale consideration of Rs.50,000/- on 20.10.2004. On the date of agreement for sale, the second respondent received a sum of Rs.45,000/- as advance and balance sale consideration also paid subsequently. On the dated of deed, the original documents of the suit property was handed over to the second respondent. Thereafter the second respondent failed to execute the sale deed.

5. It is seen that, the first respondent filed suit only on 03.01.2017. The limitation for filing the suit for specific performance is only three years. Article 54 of the Limitation Act says about the limitation for the suit for specific performance. It is relevant to extract the Article 54 of the Limitation Act as follows :-

“54	<i>For specific performance of a contract</i>	<i>Three years.</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.”</i>
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Accordingly, from the date fixed for performance or when the plaintiff has noticed that performance is refused, the suit for specific performance ought to have been filed within a period of three years.

6. In the present impugned suit, even assuming that three years time was fixed for execution of sale deed from 20.10.2004, it lapsed on 20.10.2007. Therefore within a period of three years the first respondent ought to have been filed the suit for specific performance. Admittedly, the suit has been filed only on 03.01.2017 as such, the suit is clearly barred by limitation. Therefore, the suit itself is liable to be dismissed on the ground of limitation. That apart, no cause of action arose to file the present impugned suit for specific performance. Without considering the above facts, the Court below dismissed the petition for rejection of plaint on the ground that the limitation is based on the law and facts and it can be

considered only during the trial.

7. In view of the above discussions, the order dated 18.12.2017 passed by the learned District Munsif, Dharmapuri, in I.A.No.623 of 2017 in O.S.No.6 of 2017 is hereby set aside and the plaint in O.S.No.6 of 2017, is rejected. Accordingly, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

29.06.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. The District Munsif,
Dharmapuri.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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