

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

CORAM

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

CRP.PD.Nos.4919 to 4921 of 2014 &
MP.No.1 of 2014 and CMA.No.4290 of 2019
CRP.PD.No.4919 of 2014

C.Ram Mohan

..Petitioner

Vs.

Bajaj Promoters Pvt Ltd,
Rep. by its Managing Director,
Rajesh Bajaj,
No.71/72, Pantheon Road,
Egmore, Chennai - 600 008

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.11.2014 passed by learned XI Assistant Judge in IA.No.3148 of 2014 in OS.No.5303 of 2011 on the file of the XI Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Bhagawat Krishna
For Respondent : Mr.H.Karthik Seshadri

CRP.PD.No.4920 of 2014

C.Ram Mohan

..Petitioner

Vs.

Bajaj Promoters Pvt Ltd,
Rep. by its Managing Director,

Rajesh Bajaj,
No.71/72, Pantheon Road,
Egmore, Chennai - 600 008

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.11.2014 passed by learned XI Assistant Judge in IA.No.160 of 2014 in OS.No.5303 of 2011 on the file of the XI Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Bhagawat Krishna
For Respondent : Mr.H.Karthik Seshadri

CRP.PD.No.4921 of 2014

C.Ram Mohan

..Petitioner

Vs.

Bajaj Promoters Pvt Ltd,
Rep. by its Managing Director,
Rajesh Bajaj,
No.71/72, Pantheon Road,
Egmore, Chennai - 600 008

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.11.2014 passed by learned XI Assistant Judge in IA.No.13436 of 2013 in OS.No.5303 of 2011 on the file of the XI Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Bhagawat Krishna
For Respondent : Mr.H.Karthik Seshadri

CMA.No.4290 of 2019

C.Ram Mohan

..Petitioner

Vs.

Bajaj Promoters Pvt Ltd,
Rep. by its Director,
Rajesh Bajaj,
No.71/72, Pantheon Road,
Egmore, Chennai - 600 008

..Respondent

PRAYER:

The Civil Miscellaneous Appeal is filed against the fair and decretal order dated 06.11.2014 passed by learned XI Assistant Judge in IA.No.3147 of 2014 in OS.No.5303 of 2011 on the file of the XI Assistant City Civil Court, Chennai.

For Petitioner : Mr.R.Bhagawat Krishna
For Respondent : Mr.H.Karthik Seshadri

COMMON ORDER

The present Civil Revision Petitions and Civil Miscellaneous Petition are arising out of fair and decretal order dated 06.11.2014 passed by learned XI Assistant Judge in IA.No.3148 of 2014 in OS.No.5303 of 2011 on the file of the XI Assistant City Civil Court, Chennai., fair and decretal order dated 06.11.2014 passed by learned XI Assistant Judge in IA.No.160 of 2014 in OS.No.5303 of 2011 on the

file of the XI Assistant City Civil Court, Chennai, fair and decreetal order dated 06.11.2014 passed by learned XI Assistant Judge in IA.No.13436 of 2013 in OS.No.5303 of 2011 on the file of the XI Assistant City Civil Court, Chennai and fair and decreetal order dated 06.11.2014 passed by learned XI Assistant Judge in IA.No.3147 of 2014 in OS.No.5303 of 2011 on the file of the XI Assistant City Civil Court, Chennai.

2. As far as CRP.No.4919 of 2014 is concerned, the learned counsel for the petitioner submitted that he does not want to press and seeks permission of this Court to withdraw the same. Accordingly, the civil revision petition in CRP.PD.No.4919 of 2014 is dismissed as not pressed.

3. The petitioner in all the civil revision petitions and CMA is the plaintiff. He filed suit for injunction in respect of the suit property as against the respondent herein. While filing the suit, the petitioner filed original sale deed which was executed by the defendant in his favour along with the plaint. While pending the suit, the petitioner filed petition to replace the document dated 31.10.2005 vide registered document No.2478 of 2005 by certified copy to develop and

improve his business. While pending the said petition, the respondent filed petition to impound the very same document i.e. the sale deed dated 31.10.2005 registered as document No.2478 of 2005. Later on the respondent filed applications for amendment of the plaint and also injunction as against the petitioner in respect of the suit schedule property. The petition filed by the petitioner herein for replacing original document by certified copy was dismissed. Insofar as the petition filed by the respondent to amendment, injunction and also impounding the document were allowed. Aggrieved by the same, the above civil revision petitions and CMA have been filed. In fact the petitioner filed CMA before the I Additional City Civil Court, Chennai and thereafter it was transferred before this Court and clubbed with other civil revision petitions. The respondent filed written statement on 08.07.2011 with the counter claim claiming one of the sale deeds produced by the plaintiff dated 31.10.2005 registered vide document No.2479 of 2005 to be declared as null and void. The petitioner also filed reply for counter claim of the respondent herein.

- 4 The learned counsel for the petitioner would submit that when the respondent did not file any counter claim as against another sale deed dated 31.10.2005 registered as document No.2478 of 2005

in respect of the part of the suit property, after period of two years from the counter claim, he filed petition for amendment seeking amendment in the counter claim including the sale deed dated 31.10.2005 registered vide document No.2478 of 2005, which was sought for by the petitioner by substituting certified copy of the same. Therefore, it is barred by limitation when the respondent filed petition for claiming declaration of said document. Both the sale deeds were registered on 31.10.2005 vide document No.2478 & 2479 of 2005 and as such the counter claim made by the respondent itself is barred by limitation.

5. On perusal of the records revealed that the petitioner initially filed suit for injunction in respect of the suit properties. Though the respondent filed counter claim in respect of one of the sale deed to declare as null and void, subsequently he filed petition to include the said document also in the prayer of declaration on 19.12.2013 and also sought for consequential injunction restraining the petitioner from alienating or encumber the suit property. In fact he also filed petition to impound the sale deed dated 31.10.2005 registered vide document No.2478 of 2005. The suit was filed on 08.07.2011 and the respondent filed counter claim on 16.12.2011.

Therefore, the petition to amendment and declare the other sale deed as null and void is barred by limitation. However, the trial court concluded that the issue raised in respect of the limitation itself is a mixed question of law and it has to be decided only during the trial by let in evidence. Therefore, this Court finds no infirmity or illegality in the order passed by the court below.

6. Accordingly, the civil revision petitions in CRP.PD.Nos.4920 and 4921 of 2014 and the civil miscellaneous appeal in CMA.No.4290 of 2019 are dismissed. However, as observed by the trial court, the issue of limitation is open to the petitioner to work out before the trial court during the trial. The learned counsel for the respondent submitted that the suit is pending from the year 2011. Considering the same, the trial court is directed to complete the trial within a period of nine months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No order as to costs.

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25.01.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

The XI Assistant City Civil Court,
Chennai.



CRP.PD.Nos.4919 to 4921 of 2014 &
MP.No.1 of 2014 and CMA.No.4290 of 2019

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