

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.2782 of 2019
and C.M.P. No.18227 of 2019

G.Narasimhan

...

Petitioner /
Defendant

versus

1.B.Janakiraman (deceased)
2.J.Malathi
3.J.Malarvizhi
4.J.Tamilselvi

...

Respondents /
Plaintiffs

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order of dismissal dated 15.07.2019 in respect of the application filed by the petitioner in I.A.No.13229 of 2017 in O.S.No.4233 of 2014 on the file of the learned V Assistant City Civil Judge at Chennai.

For Petitioner

: M/s.S.Thiruvengadam

For Respondents

: No Appearance

ORDER

This Civil Revision Petition is filed for setting aside the order passed in I.A.No.13229 of 2017 in O.S.No.4233 of 2014 on the file of the learned V Assistant City Civil Judge at Chennai.

2. The deceased respondent / Janakiraman filed the suit. He died after filing the suit. His legal representatives were impleaded as plaintiffs 2 to 4. The suit was filed for the relief of declaration, declaring that the deceased respondent is in absolute owner of the superstructure bearing Plot No.1507, Old Door No.201, New Door No.4, 13th Street, G.K.M. Colony, Chennai - 600 082 and direct the petitioner to hand over the possession of the said property to the deceased respondent and for permanent injunction, restraining the petitioner from alienating the suit mentioned property.

3. The case of the respondents / plaintiffs is that, during 1994, the deceased plaintiff Janakiraman's son met with an accident. He approached the petitioner for loan. On mutual agreement, instead of executing Mortgage Deed for the amount advanced, an Agreement of sale

was entered into on 03.06.1994. On the date of Agreement, a sum of Rs.10,000/- was received by the deceased Janakiraman, the balance sale consideration has to be paid within 3 months i.e. on or before 03.09.1994. The respondent did not fulfil the terms of the Agreement. However, he paid a sum of Rs.1,20,000/- and obtained an endorsement of receipt for a total sum of Rs.1,40,000/-. He agreed to pay the balance sum of Rs.55,000/- after obtaining No Objection Certificate. On 19.10.1994, the petitioner / defendant took the possession of the property. There is no Sale Deed executed by the deceased Janakiraman in favour of the petitioner. The respondents sent a legal notice to the petitioner seeking him to vacate and deliver the possession. He has not delivered the possession. Therefore, the suit was filed for the aforesaid reliefs.

4. The petitioner filed written statement. During the pendency of the suit, the petitioner filed I.A.No.13329 of 2017 for rejection of the plaint on the ground that there is long delay in filing the suit and the suit is barred by limitation. The respondents did not execute the Sale Deed inspite of request made by the petitioner. He filed the suit in O.S.No.193 of

2000 on the file of the learned V Assistant Judge, City Civil Court, Chennai. The learned V Assistant City Civil Judge found "that the property belongs to TNSCB and therefore, neither the plaintiffs nor the defendant can claim ownership of the property" and held that the suit was barred by limitation.

5. Petitioner submitted that the respondents are not the owners of the suit property and the suit is barred by law under Order VII Rule 11 of C.P.C. This petition was contested by the respondents alleging that there is no sale registered in favour of the petitioner. Therefore, the respondents are well within their right to seek the prayer claimed in the plaint.

6. Considered the rival submissions, the learned V Assistant City Civil Judge, dismissed the petition. Against the said order of dismissal, the present Civil Revision Petition is preferred.

7. No representation for the respondents.

8. The learned counsel for the petitioner submitted that the Sale Agreement had been entered into on 03.06.1994. Out of the sale consideration of Rs.1,95,000/-, a sum of Rs.1,40,000/- was already paid to the deceased Janakiraman and the balance sum of Rs.55,000/- was to be paid after obtaining No Objection Certificate from the Tamil Nadu Housing Board. The deceased Janakiraman protracting the execution of sale. The present suit filed in 2014, is clearly barred by limitation. There is no cause of action for the suit. Therefore, he prayed for setting aside the order of the learned V Additional City Civil Judge and reject the plaint.

9. It is not in dispute that the petitioner received the possession of this property in pursuance of the Sale Agreement dated 03.06.1994. Whether the respondents can now claim the relief of declaration of title of the superstructure and for possession from the petitioner, are matters of disputed facts and law. Admittedly, there was a Sale Agreement on 03.06.1994 entered into between the deceased Janakiraman and the petitioner. There is no dispute with regard to the payment of part consideration of Rs.1,40,000/-. One of the terms of the Sale Agreement is

that, the sale should be completed on or before 03.09.1994. Obviously, that was not done. The petitioner's possession in respect of the suit property is only in his capacity as an agreement holder. Till now, no Sale Deed has been executed in favour of the petitioner.

10. As seen from the order passed in the earlier suit, the Tamilnadu Slum Clearance Board is the owner of the property and the deceased Janakiraman has no right to execute the sale of this property. He filed the present suit for the reliefs aforesaid and after his death, his legal representatives are prosecuting the suit. As of now, the respondents are the legal owners of superstructure bearing Plot No.1507, Old Door No.201, New Door No.4, 13th Street, G.K.M. Colony, Chennai - 600 082.

11. These disputed questions of fact and law have to be addressed only after receiving oral and documentary evidence of the parties. There is *prima facie* case made out in favour of the respondents to institute the suit. There is cause of action for instituting the suit by the respondents. Whether the relief can be granted, depends upon oral and documentary

evidence to be produced and legal position with regard to the limitation aspect. There are triable issues involved in this case. Therefore, the prayer by the petitioner for rejection of plaint cannot be entertained and the petition for rejection of plaint was rightly dismissed by the learned trial Judge. This Court finds no reason to interfere with the order of the learned V Additional City Civil Judge, Chennai and the order dated 15.07.2019 passed in I.A.No.13229 of 2017 in O.S.No.4233 of 2014, is hereby confirmed.

12. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

02.09.2021

Speaking order / Non-speaking order

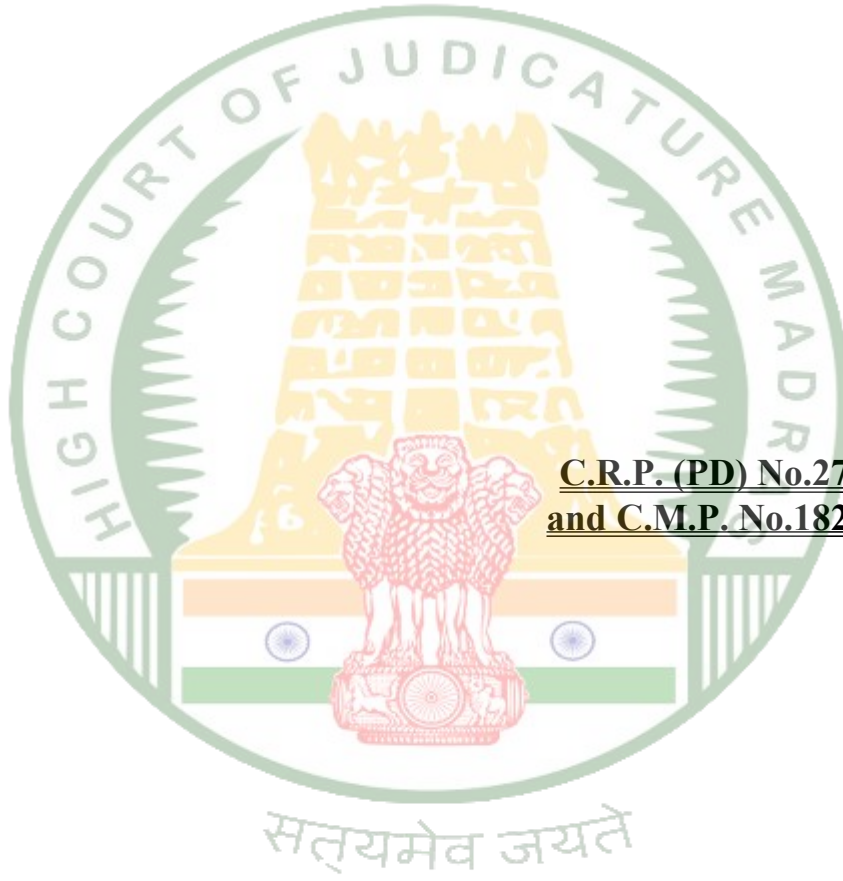
Index : Yes / No

sri

To
The V Assistant City Civil Judge, Chennai.

G.CHANDRASEKHARAN, J.

sri



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