

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (PD) No. 2845 of 2019

And

C.M.P.No. 18622 of 2019

1. Ranganathan
2. Manoharan ... Petitioners/Petitioners/Defendants

-Vs-

1. Sumathi
2. M.Manju
3. M.Rama
4. Chokkammal ... Respondents / Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order in I.A.No. 597 of 2015 in O.S.No. 21 of 2013 dated 16.07.2019 made in a petition filed by the petitioners/defendants on the file of the Principal Subordinate Judge, Chengalpattu.

For Petitioners : Mr. D.Sreenivasan

For Respondents : Mr. N. Manoharan

ORDER

The defendants in O.S.No. 21 of 2013 now pending on the file of the Principal Sub Judge, Chengalpattu, are the revision petitioners herein.

2. O.S.No. 21 of 2013 had been filed seeking specific performance of an agreement of sale dated 06.12.2001 entered into between the defendants and the husband of the first plaintiff. Under the said agreement of sale, the husband of the first plaintiff by name Mohan, had agreed to purchase the property mentioned to the schedule to the plaint at a rate of Rs.93,000/- per cent, for a total consideration of Rs.9,99,750/-. It had been stated that towards the total consideration, three instalments had been paid, totally amounting to Rs.6,10,000/-. The last instalment was paid on 13.07.2003.

3. It is the claim of the learned counsel for the revision petitioner that thereafter, no further amount was paid towards the sale consideration. The suit as stated was instituted in the year 2013. The revision petitioners herein in their capacity as defendants entered appearance and also filed

written statements. They also filed I.A.No. 597 of 2015 seeking to reject the plaint taking advantage of Order 7 Rule 11 of the Code of Civil Procedure claiming that the suit is barred by the law of limitation.

4. It is stated that a reading of the facts would reveal that the agreement between the parties was on 06.12.2001. The last date of payment of part amount towards consideration was on 13.07.2003 and the suit was filed in the year 2013. It is stated that on 28.01.2013 on behalf of the revision petitioners, a legal notice was also issued returning back the advance amount for which a reply was given and then the suit was filed.

5. It is however pointed out by Mr. N. Manoharan, learned counsel for the respondents /plaintiffs that though in the agreement, the revision petitioners/defendants had very specifically stated that they are in possession and had used the word அனுபவம், however, the facts revealed that in the year 1994 itself, one Jayaprakash had instituted a suit claiming protection for possession except and the revision petitioners had also filed a suit seeking recovery of possession. It was therefore stated that it is evident on the face of record that the revision petitioners /defendants were not in

possession as on the date of agreement of sale. Such suit filed by the Jayaprakash and the other suit filed by the revision petitioners for recovery of possession travelled upto the High Court and finally in S.A.No. 1258 of 2001 by Judgment dated 12.06.2012, the revision petitioners herein were granted permission to recover possession. Thereafter, they had then filed execution petition and it is claimed that they took possession only on 11.01.2019. It is the contention of Mr.N.Manoharan that the cause of action to institute the suit extended till 12.06.2012 and only then did the right to sue on the agreement accrued to the plaintiff. It is stated that necessary explanation to explain the delay in filing the suit as provided under Order 7 Rule 6 of the Code of Civil Procedure had been pleaded in the plaint.

6. Faced with these pleadings, the learned Principal Sub Judge, Chengalpattu, dismissed I.A.No. 597 of 2015 leading rise to the filing of the present revision petition. Stay had been granted of all further proceedings of the suit in the revision petition.

7. Having heard the learned parties, I am of the opinion that the contention of both the parties will have to be appreciated in their proper perspective by the learned Principal Sub Judge.

8. The contention of the defendants is that the agreement was dated 06.12.2001, and the last payment towards the sale consideration was on 13.07.2003 and the suit had been instituted only after notice had been issued by the revision petitioners returning back the advance amount already received by them. On the other hand, the contention of the respondents/plaintiffs that their right to sue accrued only subsequent to the date of the Judgment in S.A.No. 1258 of 2001 dated 12.06.2012.

9. It would only be appropriate that both the parties are relegated back to the trial and the learned Special Judge frames necessary issues both with respect to the point of limitation and also whether sufficient explanation had been given as enunciated under Order 7 Rule 6 of the Code of Civil Procedure and invite both the plaintiffs and the defendants to graze the witness box and adduce evidence and thereafter come to a just conclusion with respect to the issues raised in the suit. That would give a

just disposal to the grievances of the parties who have been litigating for the past nearly 8 years over an agreement of sale which is nearly about 20 years old as on this date.

10. I would therefore uphold the order but would however once again request the learned Sub Judge re-enter into a finding on facts based on the explanations given by the plaintiff with respect to limitation and also the averments made by the defendants with respect to the fact that the suit is barred by the law of limitation. Necessary opportunity may be given to both the parties to lead evidence on all the aspects raised in the pleadings. The subsequent events with respect to the filing of execution petition pursuant to the Judgment in S.A.No. 1258 of 2001 dated 12.06.2012 may also be taken judicial note by the learned Principal Sub Judge. It is also stated that the balance sale consideration has also been deposited to the credit of the suit and that is a fact which is already on the records of the learned Principal Sub Court, Chengalpattu.

11. Since the parties have been litigate for the past 8 years, I would place an embargo on the learned Principal Sub Judge to bestow personal

attention to dispose of the suit, at any rate, endeavour to dispose the same on or before 31.12.2021.

12. With the said observation, this Civil Revision Petition is disposed of. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking



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