

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1985 of 2017

B.Rajashekar

.. Petitioner

Vs.

1.M.Sargunam

2.M.Uma

3.Mariyappan

4.M.Gnanam

5.M.Gomathi

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the judgment and decree dated 09.12.2016 made in O.S.No. Nil of 2016 (19 R.No. 4083) on the file of the Principal District Court, Dharmapuri.

For Petitioner

: Mr.S.Sundarshan

for M/s.S.Subramanian

For Respondents : Mr.P.M.Jayachandran

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed to set aside the judgment and decree dated 09.12.2016 made in O.S.No. Nil of 2016 (19 R.No. 4083) on the file of the Principal District Court, Dharmapuri.

2.The petitioner/plaintiff filed O.S.No. Nil of 2016 (19 R.No. 4083) on the file of the Principal District Court, Dharmapuri, against the respondents for specific performance of agreement of sale dated 23.04.2007, possession and alternate relief of directing the respondents to repay the amount of Rs.6,10,000/- together with interest at the rate of 18% per annum. The plaint was presented on 05.07.2016. By the order dated 09.12.2016, the learned Judge rejected the said plaint. Against the said rejection, the petitioner has come out with the present Civil Revision Petition.

3.The learned counsel appearing for the petitioner submitted that the learned Judge erred in rejecting the plaint without numbering the suit.

In specific performance of agreement of sale, time is not the essence of contract. The learned counsel appearing for the petitioner contended that the petitioner paid a sum of Rs.2,10,000/- on the date of agreement of sale and subsequently, paid Rs.2,00,000/- on 27.08.2007, Rs.1,00,000/- on 03.01.2008 and Rs.1,00,000/- on 21.02.2008, by way of Demand Drafts. The respondents made endorsement on the back side of the agreement that registration may be done by the end of May, 2011, on petitioner submitting official survey report. The respondents neither produced the official survey report nor executed the sale deed. The petitioner issued notice dated 12.09.2012, through his counsel on 19.12.2013. One R.Madhappan, father of the respondents handed over the original parent document to the petitioner in part performance of agreement of sale and promised to secure the relevant revenue records. The father of the respondents agreed to execute the sale deed on receipt of revenue records. The petitioner, through his counsel, issued another notice dated 11.05.2016, demanding the father of the respondents and respondents to execute the sale deed. The learned counsel appearing for the petitioner further contended that while a sum of Rs.2,00,000/- was

paid on 27.08.2007, in the judgment, the learned Judge mistakenly mentioned the date as 18.08.2007. More over, in the impugned order, it has been stated as if Rs.25,000/- was paid on 12.11.2014, by RTGS, while the same was not pleaded by the petitioner anywhere in the plaint. The question of limitation is a mixed question of law and fact and it can be decided based on the oral and documentary evidence let in by the parties during the trial and prayed for a direction to the learned Judge to take the plaint on file and number the suit and dispose the same on merits.

4.The learned counsel appearing for the respondents submitted that against the rejection of plaint, the petitioner ought to have filed an appeal and the revision is not maintainable. The suit is barred by limitation and prayed for dismissal of the Civil Revision Petition.

5.The learned counsel appearing for the petitioner, in reply, submitted that the suit was rejected without any adjudication by the Trial Court and the order of the learned Judge cannot be construed as a

judgment and decree. In view of the same, the Civil Revision Petition is maintainable and prayed for allowing the Civil Revision Petition. In support of his contentions, the learned counsel appearing for the petitioner relied on the order of this Court reported in **2019 (2) CTC 912**

[Kittusamy Vs. K.Vellaisamy and another]:

“8.On a perusal of the above judgments, it is clear that when the order of the trial court rejecting the plaint, only appeal will be maintainable. There is no dispute with regard to the above judgments. The contention of the learned counsel for the respondents that the suit has been rejected and there was adjudication by the trial Court. Therefore, the order will be deemed as a decree. The contention of the respondents cannot be countenanced for the simple reason that to construe an order as a decree, there must be a formal expression of adjudication by the trial Court, which conclusively determines the rights of the parties with regard to all or any of the matter and for such adjudication, there must be a suit. Without the suit being numbered, the trial Court dismissing the suit without proper adjudication, same cannot be turned as a decree. Therefore, this Court can invoke the powers under Article 227 of the Constitution of India and set aside the same. There must be adjudication and determination of the rights of the parties conclusively and finally and mere order of rejecting the suit without even the suit has been numbered, cannot be turned as decree.”

6.Heard the learned counsel appearing for the petitioner as well as the respondents and perused the materials available on record.

7.From the materials on record, it is seen that the petitioner has filed the suit for specific performance of agreement of sale. According to the petitioner, on the date of agreement, he paid a sum of Rs.2,10,000/-. It is the further contention of the petitioner that subsequently, he paid Rs.2,00,000/- on 27.08.2007, Rs.1,00,000/- on 03.01.2008 and Rs.1,00,000/- on 21.02.2008, by way of Demand Drafts. Further case of the petitioner is that the respondents made endorsement on the back side of the agreement of sale. It is the case of the petitioner that on 19.12.2013, the father of the respondents handed over the original parent documents. The petitioner also issued two notices through his counsel on 12.09.2012 and 11.05.2016. The learned Judge, without properly considering the averments in the plaint, has given a finding that the petitioner has not explained as to why subsequent payments are made. The learned Judge also found fault with the petitioner for having issued notice after two years of payment. In addition to that, the learned Judge

has held that as per the amendment to the Registration Act, the agreement of sale has to be registered. The learned Judge failed to consider that agreement of sale sought to be executed by the petitioner is dated 23.04.2007, which is prior to the amendment. The issue, whether the petitioner can rely on unregistered agreement of sale entered into before amendment to the Registration Act or not, can be decided only after giving opportunity to the petitioner to let in evidence. Similarly, the subsequent payments, endorsement made on the back side of the agreement of sale and handing over the original parent document on 19.12.2013 will save the period of limitation and whether the time is not essence of contract or not can be decided only after considering the oral and documentary evidence let in by the parties before the Trial Court.

8.It is well settled that the question of limitation is a mixed question of law and fact, which can be decided only based on the oral and documentary evidence let in by the parties. The learned Judge, on erroneous reasons, rejected the plaint. The learned Judge has committed error and irregularity in rejecting the plaint.

9.The contention of the learned counsel appearing for the respondents that the Civil Revision Petition is not maintainable and only the appeal is maintainable is without merits. The learned Judge rejected the suit without any adjudication by the parties and the said order cannot be construed as a decree. The order of this Court reported in **2019 (2) CTC 912** (cited supra), relied on by the learned counsel appearing for the petitioner is squarely applicable to the facts of the present case.

10.For the above reason, the impugned order dated 09.12.2016 made in O.S.No. Nil of 2016 (19 R.No. 4083) is set aside and the learned Principal District Judge, Dharmapuri, is directed to take the plaint on file, if it is otherwise in order, and decide the same on merits and in accordance with law.

In the result, this Civil Revision Petition is allowed. No costs.

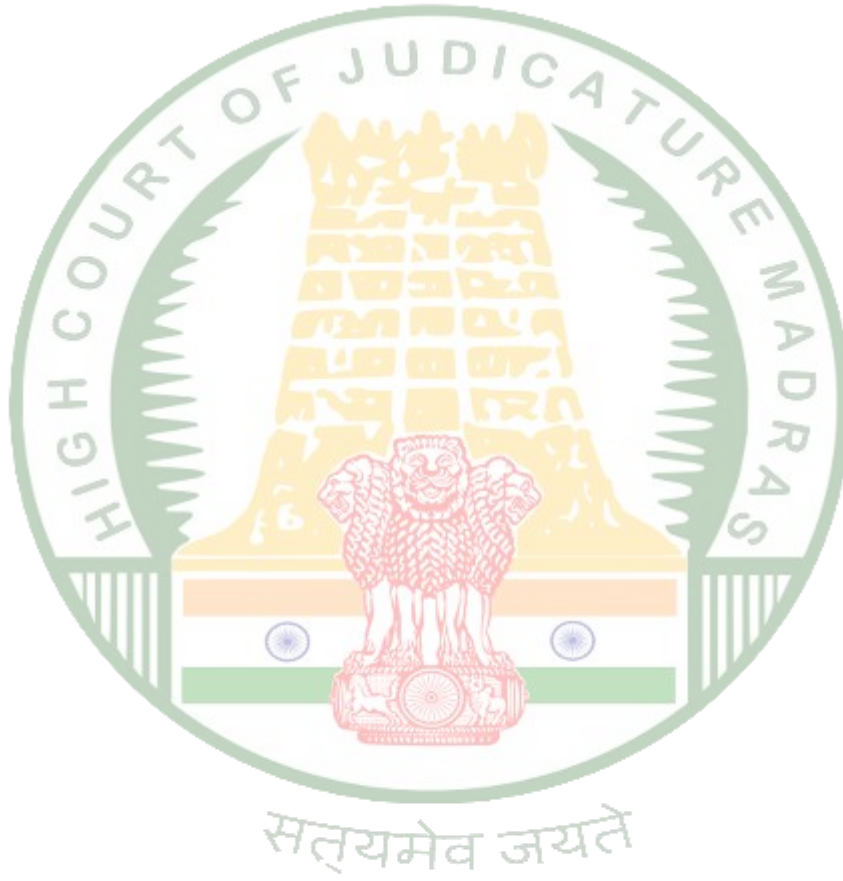
Index :: Yes/No
gsa

04.10.2021
(½)

8/10

To

The Principal District Judge,
Dharmapuri.

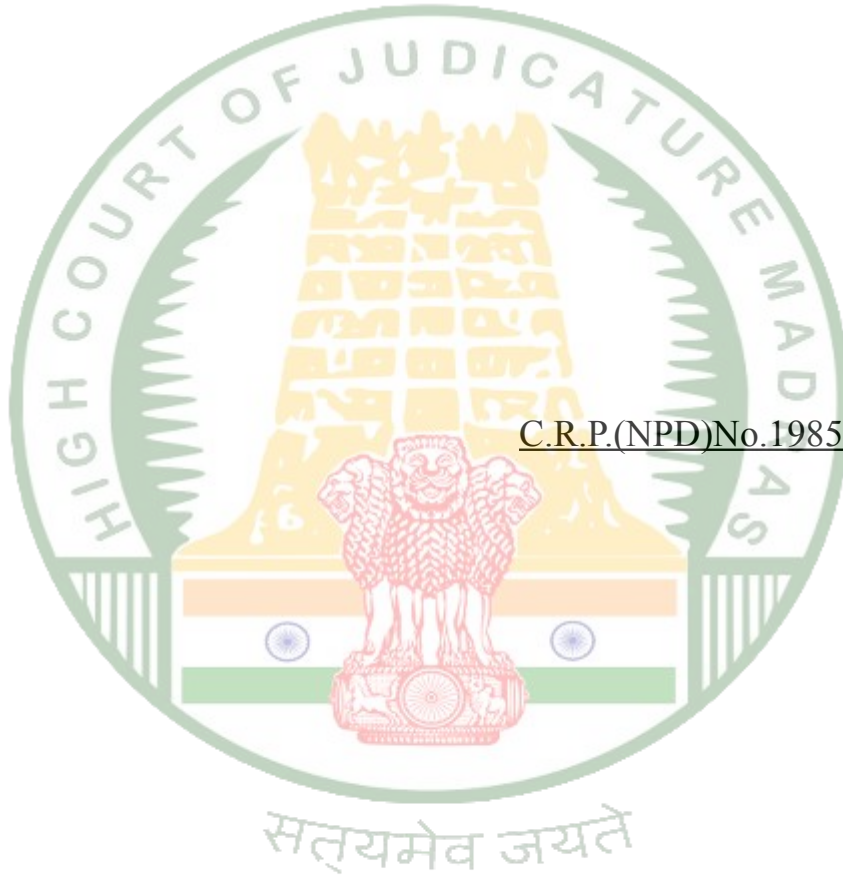


WEB COPY

C.R.P.(NPD).No.1985 of 2017

V.M.VELUMANI, J.

gsa



C.R.P.(NPD)No.1985 of 2017

WEB COPY

04.10.2021
(½)