

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.1986 of 2017

B.Rajashekar

.. Petitioner

Vs.

1.M.P.Krishnan

2.Indirani

.. 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. 4087) on the file of the Principal District Court, Dharmapuri.

For Petitioner

: Mr.S.Sundarshan
for M/s.S.Subramanian

For Respondents

: Mr.B.Bharath Kumar
for M/s.V.Nicholas

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. 4087) on the file of the Principal District Court, Dharmapuri.

2.The petitioner/plaintiff filed O.S.No. Nil of 2016 (19 R.No. 4087) on the file of the Principal District Court, Dharmapuri, against the respondents for specific performance of agreement of sale dated 07.04.2007, possession and alternate relief of directing the respondents to repay the amount of Rs.12,80,625/- together with interest at the rate of 18% per annum. The plaint was presented on 05.07.2016. By the judgment 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.4,00,000/- on the date of agreement of sale and subsequently, paid Rs.3,00,000/- on 05.11.2007 by way of cash and Rs.1,50,000/- on 21.02.2008, by way of Demand Draft. The respondents made endorsement on the back side of the agreement that registration may be done by the end of May, 2010, on petitioner submitting official survey report. The respondents neither produced the official survey report nor executed the sale deed. The petitioner issued notice dated 25.09.2012. Though the respondents promised to furnish the documents and execute the sale deed, they did not execute the same. The petitioner, issued another notice dated 11.05.2016, demanding the respondents to execute the sale deed. 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 made submission in support of the order of the learned Judge and prayed for dismissal of the Civil Revision Petition.

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

6.From the materials on record, it is seen that the petitioner filed suit for specific performance of agreement of sale. According to the petitioner, on the date of agreement, he paid a sum of Rs.4,00,000/-. It is the further contention of the petitioner that subsequently, he paid Rs.3,00,000/- on 05.11.2007 by way of cash and Rs.1,50,000/- on 21.02.2008, by way of Demand Draft. The further case of the petitioner is that the respondents made endorsement on the back side of the agreement of sale. The petitioner also issued two notices on 25.09.2012 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 07.04.2007, 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 and the endorsement made on the back side of the agreement of sale, 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.

7.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.

8.For the above reason, the impugned order dated 09.12.2016 made in O.S.No. Nil of 2016 (19 R.No. 4087) 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.

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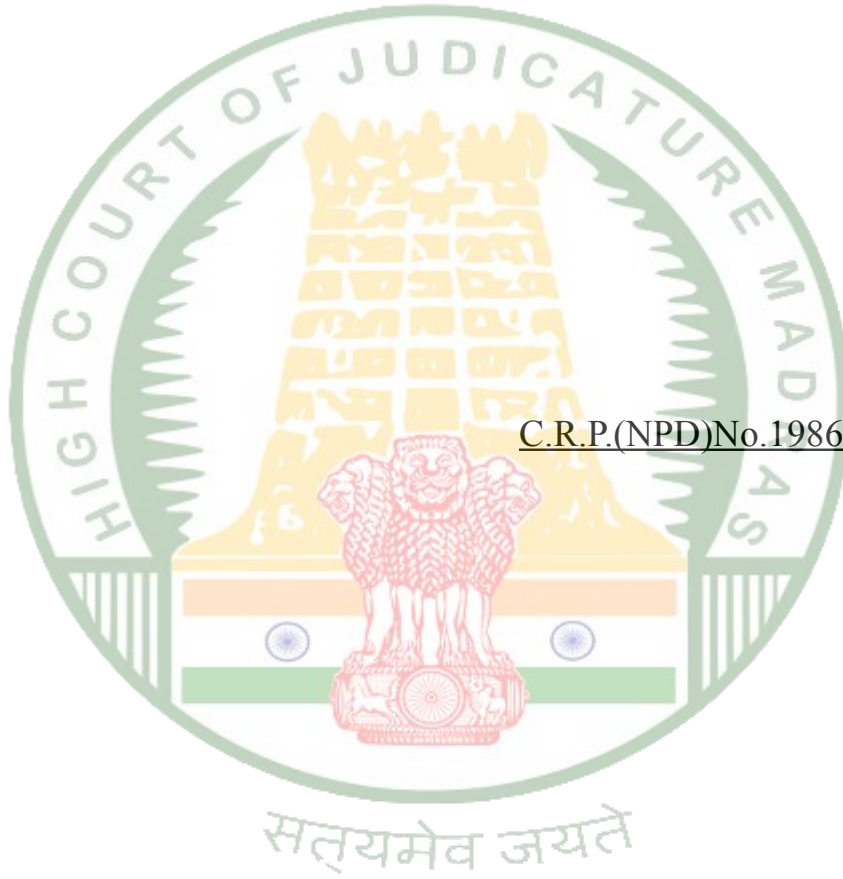
To
The Principal District Judge,
Dharmapuri.

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V.M.VELUMANI, J.

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