IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.7.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.(PD) No.2588 of 2017
and
C.M.P.No.12336 of 2017

1. Dayalan
2. D.Bharathi
3. D.Gayathri
4. D.Harikrishnan ... Petitioners

vs.

1. Mrs.G.Govindammal
2. Nithyakalyani
3. D.Veerammal ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 16.6.2016 passed in I.A.No.404 of 2015 in O.S.No.26 of 2015 on the file of the Sub Judge, Tiruttani.

For Petitioner : Mr.D.Ashokkumar

For R1 : Mr.Rishi S.Ahuja
For RR2 and 3 : No appearance.

ORDER

The revision has been filed seeking to set aside the order dated 16.6.2016 passed by the learned Sub Judge, Tiruttani in I.A.No.404 of 2015 in O.S.No.26 of 2015.

2. Brief facts of the case is as under:-

The revision petitioners are defendants 1 to 4 in O.S.No.26 of 2015 filed by the first respondent/plaintiff seeking for

(i) a direction to defendants 1 to 5 to execute the sale deed in favour of the plaintiff in respect of the schedule mentioned property and get it registered at her cost failing which to execute the sale deed in favour of the plaintiff and to register the sale deed in respect of the schedule mentioned property;

(ii) for a permanent injunction restraining the defendants in any manner interfering with the peaceful possession and enjoyment of the schedule mentioned property; and

(iii) to declare the settlement deed dated 15.10.2014 executed by the first defendant in favour of the sixth defendant under Document No.5408/2018 registered in the office of the Sub Registrar, Thiruvalangadu as null and void.

3. It is the case of the plaintiff that defendants 1 to 5 agreed to sell the suit schedule property to the plaintiff for full and valid consideration of Rs.2,25,000/- and that the first defendant had received an advance amount of Rs.2,00,000/- on 16.2.2006 and defendants 1 to 5 have jointly executed a stamped agreement of sale on the same day in favour of the plaintiff conveying the suit schedule

properties and further agreed to receive the balance sum of Rs.25,000/- and get it registered at her cost after discharging the Government loan already availed by the first defendant by mortgaging the suit schedule property within five years. Pursuant to the agreement the defendants also handed over possession of the schedule mentioned property to the plaintiffs and agreed to construct the incomplete portion in the suit property by spending her own money and also agreed to construct the first floor and allow the plaintiff to live in the suit schedule property. It is the further case of the plaintiff that after five years, the plaintiffs orally asked the defendants with regard to discharge of such loan availed by the defendant from the Government, however, the defendants had been postponing the same. Whileso, the plaintiff had applied for an encumbrance certificate dated 30.11.2014 and came to know that the defendants had discharged the Government loan on 25.6.2013 and later had created a settlement deed dated 15.10.2014 in favour of the sixth defendant, wife of the first defendant with the sole view to defeat the sale agreement in respect of the properties and thereby the suit was filed.

4. The revision petitioner/defendant had filed a petition in I.A.No.404 of 2015 in O.S.No.26 of 2015 under Order VII Rule 11 CPC

seeking to reject the plaint contending that the document on the basis of which the suit was filed is an unregistered sale agreement and that it was executed when the first defendant had approached the plaintiff for a loan and that the plaintiff told them that it is a simple mortgage and accordingly, the first defendant and other defendants have signed the document thinking that it was a simple mortgage but, the plaintiff got the sale agreement instead of simple mortgage deed and it was known to them only after filing of the suit. Yet another ground was taken by the defendants that the sale agreement was executed on 16.2.2006 and therefore, plaintiff ought to have sought for registration of the sale deed within a period of five years viz., on or before 15.2.2011 but, the above suit had been filed by the palintiff only on 24.2.2015 four years after the period of limitation and further the plaintiff had also got a registered power of attorney deed from the defendants on 17.2.2006 and that after the general power of attorney executed by the defendants, the alleged sale deed dated 16.2.2006 is the dead one and cannot be enforced under law.

5. The respondents/plaintiffs filed a counter affidavit stating that the unregistered sale deed dated 16.2.2006 is true and it has been further contended that the defendants had approached the

plaintiff to lend money and further it had been stated that the defendants were well aware of the execution of the sale agreement and that in the sale agreement dated 16.2.2006 the defendants had agreed to discharge the Government loan already availed by the first defendant and that the sale deed would be executed after receipt of the balance sum of Rs.25,000/- and that the defendants have not intimated about the discharge of Government loan and to defeat the right of the plaintiff, the first defendant had settled the property in favour of the sixth defendant on 15.10.2014. It was further contended that the plaintiff was ready and willing for registration of the sale deed and that only to defeat the right of the plaintiff, the settlement deed was made. It was also contended that the power of attorney executed in favour of the petitioner was canceled by the defendant.

6. During the course of enquiry, the defenants have marked Exs.P1 to P4 and on the side of the respondents/plaintiffs, Exs.R1 to R5 were marked.

7. The Trial Court on perusing the contents of Ex.R1 sale agreement dated 16.2.2006, preferably the last para thereof to the effect that on discharge of the loan, if defendants 1 to 4 fail to execute the sale deed, they agree for compulsory registration of the

sale deed and having found that the debt was discharged only on 25.6.2013 as evidenced by Ex.R5, found that the limitation period had commenced only from 25.6.2013 and thus, the suit filed on 3.3.2015 is well within the limitation period of three years and accordingly, dismissed the petition seeking to reject the plaint against which the present revision has been filed.

8. Learned counsel appearing for the petitioners would submit that the petitioners have only obtained a loan of Rs.2,25,000 from the respondent/plaintiff, however, the respondent/plaintiff had taken signature of the petitioners by making them to believe that it was only a simple mortgage, however, she had converted it as an agreement of slae. He would further submit that such a document is also alleged to have been executed on 16.2.2006 and therefore, the suit ought to have been filed within five years from the date of agreement i.e., on or before 15.2.2011, whereas, it has been filed on 24.2.2015, however, the Trial Court, without taking into consideration the limitation, had dismissed the petition filed by the defendants seeking to reject the plaint. He would also submit that the suit is also under valued as even on the date of the sale agreement, the suit property was worth about Rs.3,00,000/- and the petitioners had availed a loan of Rs.2,34,000 from the Government in the year 2003.

9. Per contra, the learned counsel for the respondents would submit that the petitioners/defendants are well aware of the sale agreement and based on the sale agreement, possession was handed over to the plaintiff and the petitioners/defendants had already availed loan from the Government in respect of the very same property and the petitioners had agreed to discharge the Government loan and register the sale deed thereafter in the name of the respodent/plaintiff and there is a specific clause in the agreement that once the respondent/plaintiff discharges the loan, sale deed will be executed in favour of the plaintiff. He would further submit that the repondent/plaintiff had been regulalry following up the matter with the petitioners/defendants, however, the petitioners/defendants been delaying the execution of the sale deed and subsequently, they had settled the loan on 25.6.2103 but, without intimating the resondent/plaintiff about the discharge of the loan, the first defendant had executed the settlement deed in favour of the sixth defendant who is the wife of the first defendant on 15.4.2014 to defeat the interest of the respondents/plaintiffs. He would further submit that the respondent/plaintiff got knowledge about the settlement of the loan only on receipt of Ex.R5 encumbrance certificate and immediately, within the period of limitation, the suit

has been filed. He would, therefore, submit that the Trial Court rightly finding that the suit is not barred by limitation, has dismissed the petition filed to reject the plaint and there is no infirmity in the order passed by the Trial Court.

10. Heard the learned counsel for the parties and perused the materials available on record.

11. The argument putforth by the learned counsel for the petitioners is mainly two fold, one being the sale agreement alleged to have been executed by the defendants was signed by the defendants on the belief alleged to have been made by the plaintiff that it was only a simple mortgage for the money lent by her to the first defendant, but, she had converted the same as an agreement for sale and therefore, it is not valid in the eye of law and the other contention being the suit is barred by limitation considering the date of the said document.

12. It is the settled law that acceptance or rejection of the plaint can be only based on its contentions and the documents filed alongwith the plaint and not on any other materials putforth by the defendants. The factual disputes as to whether the document in question was executed under the pretext that it was only a simple mortgage deed or an agreement of sale can be gone into only during

the full fledged trial and that ground cannot be the basis for rejection of the plaint. Therefore, the only question that remains to be answered by this court is whether the suit is barred by limitation and whether it can be rejected on such a ground.

13. On perusal of the agreement of sale, it is revealed that it was executed on 16.2.2006, however, the contents of the same discloses without any doubt that the defendants had agreed to execute the sale deed on discharge of the loan availed from the Government. Therefore, it is clear that the limitation period of 3 years for filing the suit for specific performance as per Article 54 of the Limitation Act could commence only from the date of discharge of loan which is 25.6.2013 in the case on hand as evidenced by Ex.R5 encumbrance certificate. Therefore, this court does not find any error or illegality with the finding rendered by the Trial Court that the suit is not barred by limitation.

14. With regard to the other issue viz., the nature of the document in question viz., it is not an agreement of sale, but, it was intended to be executed only as a simple mortgage deed, this court finds that the said aspect can be gone into by the Trial Court during the full fledged trial.

15. In view of the above, this court is of the view that the civil

revision petition is liable to be dismissed and accordingly, it is dismissed. No costs. The connected Miscellaneous Petition is also dismissed. Trial Court is directed to conclude the trial and dispose of the suit as expeditiously as possible.

14.7.2021.

Index: Yes/No.
Internet: Yes/No.
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To

Sub Judge, Tiruttani

A.D.JAGADISH CHANDIRA, J.

Ssk.

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