

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2666 of 2017

K.P.Mani

... Petitioner

Vs.

1.P.Munusamy

2.N.Shanmugham

3.V.S.Ravi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 16.10.2014 made in I.A.No.2 of 2014 in O.S.No.10 of 2011 on the file of the Additional District Munsif Court, Tiruvallur.

For Petitioner : Mr.A.R.Suresh

For Respondents : Mr.K.Balaji

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 16.10.2014 made in I.A.No.2 of 2014 in O.S.No.10 of 2011 on the file of the Additional District Munsif Court, Tiruvallur.

2.The petitioner is plaintiff and the respondents are the defendants in O.S.No.10 of 2011 on the file of the Additional District Munsif Court, Tiruvallur. The petitioner filed the said suit for declaration of title to the suit property, for injunction restraining the 3rd respondent from alienating or creating any encumbrance over the suit property, for permanent injunction restraining the 3rd respondent from interfering with the petitioner's peaceful possession and enjoyment of the suit schedule property and for declaration that the sale deed dated 17.03.2010 in favour of the 3rd respondent by the 1st respondent through 2nd respondent in Document No.624/2010 is null and void. The 1st respondent filed written statement and the same was adopted by the respondents 2 and 3. The

petitioner filed I.A.No.2 of 2014 under Order VI Rule 17 read with Section 151 of C.P.C. seeking permission to amend the plaint.

3.According to the petitioner, he is the younger brother of the 1st respondent, who settled in Andhra Pradesh. To meet out urgent expenses, the 1st respondent agreed to sell the suit property for a sum of Rs.2,90,000/-. The petitioner paid a sum of Rs.2,00,000/-. The petitioner and 1st respondent entered into an agreement of sale dated 27.01.1999 mentioning payment of Rs.2,00,000/- and the 1st respondent agreed to execute sale deed on receipt of balance sale consideration of Rs.90,000/-. The petitioner paid balance sale consideration of Rs.90,000/- on 19.11.2002 and the 1st respondent executed an unregistered sale letter on that day to the petitioner. In the first week of December 2010, the 3rd respondent tried to trespass into the suit lane. The petitioner with the help of villagers prevented the 3rd respondent. The 3rd respondent claimed to be owner of the suit property having purchased the same from the 1st respondent. The petitioner on verification with the Sub-Registrar came to

know that by the deed of sale dated 17.03.2010, the 1st respondent sold the suit property to the 3rd respondent through the 2nd respondent. Hence, the petitioner filed the suit for declaration and other relief. The petitioner has also stated that the Hon'ble Apex Court has held that unregistered sale letter is not a sale deed and is only an agreement of sale. In view of the same, the petitioner filed present I.A. for amendment to include the alternate relief as “directing the respondents to execute and register a regular sale deed in favour of the petitioner for a sum of Rs.2,90,000/- over the schedule mentioned property as per the agreement of sale dated 27.01.1999 by confirming the unregistered sale deed dated 19.11.2002”.

4.The respondents filed counter affidavit, denied all the averments in the affidavit and stated that the 1st respondent in the written statement filed on 13.07.2011 denied execution of the agreement of sale dated 27.01.1999 and sale letter dated 19.11.2002. The petitioner by amendment is seeking to introduce a new case and new cause of action. The relief now sought for by the petitioner is barred by limitation. The

relief now sought for by way of amendment was available at the time of filing of the suit to the petitioner, but he did not claim the said relief and also did not obtain leave under Order II Rule 2 of C.P.C. to file the suit for specific performance at later stage and prayed for dismissal of the said I.A.

5.The learned Judge considering the averments in the affidavit, counter affidavit, date of agreement of sale, sale letter and the judgments relied on by the counsel for the parties, dismissed the I.A. holding that the relief now sought for by the petitioner is barred by limitation.

6.Against the said fair and decretal order dated 16.10.2014 made in I.A.No.2 of 2014 in O.S.No.10 of 2011, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner contended that the learned Judge erroneously dismissed the I.A. for amendment of

plaint by way of an alternate relief without considering the facts and circumstances of the case. The amendment now sought for is pre-trial amendment and such amendment must be allowed as held by this Court. The learned Judge erred in dismissing the application on the ground of limitation without considering the fact that question of limitation is a mixed question of law and fact and the same is to be decided only on the basis of the evidence on record. The object of the provisions of C.P.C. is to allow the amendment either partly to alter or amend the pleadings in order to avoid multiplicity of proceedings and prayed for setting aside the order of the learned Judge and allowing the I.A.

8.The learned counsel appearing for the respondents made submissions in support of the order of the learned Judge and prayed for dismissal of the Civil Revision petition.

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

10.From the materials on record, it is seen that the petitioner filed suit for declaration and injunction. According to the petitioner, the 1st respondent agreed to sell the suit property for total sale consideration of Rs.2,90,000/-, on receipt of a sum of Rs.2,00,000/-, the petitioner and 1st respondent entered into agreement of sale on 27.01.1999. According to the petitioner, the 1st respondent handed over the possession of the suit property on the date of agreement and from that day, he is in possession and enjoyment of the suit property. He further stated that as per the terms of agreement, the 1st respondent agreed to receive balance sale consideration of Rs.90,000/- and agreed to execute the sale deed in favour of the petitioner.

11.From the order of the learned Judge, it is seen that as per the terms of agreement of sale, if the 1st respondent after receiving balance sale consideration fails to execute the sale deed, it is open to the petitioner to approach the appropriate forum. According to the petitioner, he paid balance sale consideration of Rs.90,000/- on 19.11.2002 and 1st

respondent executed unregistered sale letter on that day. Except executing the sale letter, the 1st respondent did not execute and register the sale deed in favour of the petitioner. The petitioner also did not take any steps to get the sale deed executed in his favour. According to the petitioner, only in 1st week of December 2010, when the 3rd respondent tried to trespass into the suit property, he came to know that the 1st respondent executed the sale deed dated 17.03.2010 in favour of the 3rd respondent through the 2nd respondent. On coming to know the sale deed executed in favour of the 3rd respondent, the petitioner filed present suit on 12.01.2011. When the petitioner filed the said suit for declaration and other relief, the relief of seeking specific performance was available to the petitioner. The petitioner has not chosen to seek alternate relief of specific performance now sought for by way of amendment at the time of filing of the suit itself. The petitioner has also not obtained leave of Court under Order II Rule 2 of C.P.C. reserving his right to file suit for specific performance at later stage. The petitioner has filed suit on specific averment that he has become owner of the suit property on

19.11.2002, when the 1st respondent executed unregistered sale letter. Having taken such a specific stand by seeking alternate relief of specific performance as agreement holder, he is introducing new cause of action and new case. If the amendment is ordered, the character of the suit will be changed.

12.It is true as contended by the learned counsel for the petitioner that application for pre-trial amendment must be considered liberally. At the same time, an application for amendment, even if it is pre-trial amendment cannot be ordered, if party is introducing new cause of action and new case, which will change the entire character of the suit. It is the contention of the learned counsel appearing for the petitioner that question of limitation is a mixed question of law and fact and it can be decided only after considering the evidence let in during trial.

13.From the materials on record, it is seen that the agreement of sale is dated 27.01.1999, unregistered sale letter is dated 19.11.2002, the

suit is filed on 12.01.2011 and on that day itself, the relief of specific performance is barred by limitation. It is open to the Court to consider the averments in the plaint and decide whether the suit is barred by limitation or not. Even before numbering the plaint, the Court has power to reject the plaint on the ground of limitation. In the present case, on the date of agreement of sale dated 27.01.1999 and unregistered sale letter dated 19.11.2002, the suit is barred by limitation. Further, the petitioner is introducing new cause of action and new case, which cannot be ordered, even if it is pre-trial amendment. The learned Judge considering the dates of agreement of sale and other materials, held that the amendment now sought for is barred by limitation. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

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14.For the above reasons, the Civil Revision Petition stands dismissed. The suit is of the year 2011 and the learned Judge is directed

to dispose of the suit as expeditiously as possible, in any event, within six months from the date of receipt of a copy of this order. No costs.

06.10.2021

Index : Yes/No
Internet: Yes/No
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To

The Additional District Munsif, Tiruvallur.

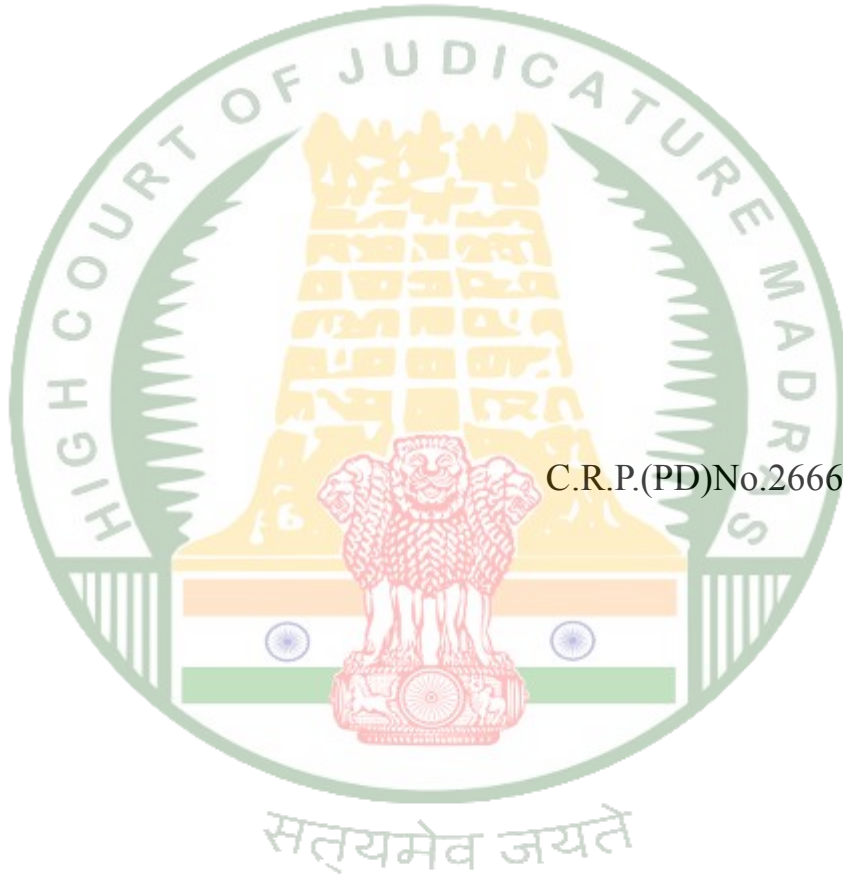


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V.M.VELUMANI,J.

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