

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3226 of 2017
and C.M.P.No.15118 of 2017

M.R.Savithiri

... Petitioner

Vs.

1.M.Subrmaniam

2.M.Murugesan

3.R.Duraisamy

4.V.P.Gnanasundaram

5.R.Venkatachalam

6.R.Parimala

7.The Sub-Registrar, Joint I
having office at Town Hall
Sub-Registrar Office
Gobichettipalayam Town and Taluk.

8.The Executive Officer
Office situated at
Modachur Panchayat
Vettaikaran Kovil
Gobichettipalayam Town and Taluk.

9.The State rep. by its
District Collector
Collectorate
Erode District, Erode.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.
against the fair and decretal order dated 20.07.2017 made in C.F.R.71 of
2017 in unnumbered O.S. on the file of the Sub Court,
Gobichettipalayam.

For Petitioner : Mr.C.Prabakaran

ORDER

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

Civil Revision Petition is filed against the fair and decretal order
dated 20.07.2017 made in C.F.R.71 of 2017 in unnumbered O.S. on the
file of the Sub Court, Gobichettipalayam.

2.Heard the learned counsel appearing for the petitioner and
perused the entire materials on record.

3.The petitioner is plaintiff and the respondents are defendants in un-numbered suit. The petitioner presented the plaint on 17.05.2017. The learned Judge returned the plaint raising the question of limitation.

4.The learned counsel appearing for the petitioner submitted that the petitioner has borrowed a sum of Rs.1,25,000/- from the 2nd respondent, the 2nd respondent insisted her to execute Power of Attorney and register the same. The 2nd respondent also by coercion took signature of the petitioner in a blank stamp papers and green sheets. The 2nd respondent as Power of Attorney executed a registered agreement of sale in favour of the 3rd respondent on 17.03.2003. The respondents 2 and 3 executed sale deed in favour of the 4th respondent on 02.09.2004. The petitioner has lodged a complaint to the Deputy Inspector General of Police, Coimbatore Range, against the respondents 1 to 3. The 4th respondent filed Writ Petition No.7884 of 2007 before this Court. The petitioner lodged another complaint dated 17.07.2010 and filed Crl.O.P.No.28405 of 2010 before this Court. As per the order of this

Court, an F.I.R. was registered against the respondents 1 to 3 under Section 420, 468 and 471 I.P.C. on the file of the Judicial Magistrate's Court No.I, Gobichettipalayam, in C.C.No.89 of 2015. According to the petitioner, she obtained expert's opinion with regard to her signature in the criminal case and expert gave opinion in her favour. She received opinion on 25.04.2017, filed suit on 17.05.2017 seeking declaration that the sale deed dated 02.09.2004 is null and void and not binding on the petitioner, for permanent injunction restraining the 6th respondent from alienating or encumbering the suit property and restraining the 7th respondent not to register any further documents in respect of the suit property to any third party. Therefore, the suit filed is in time and not barred by limitation.

5.The learned Judge considering the averments made in the plaint and date on which the document sought to be declared as void and other dates, held that the suit is barred by limitation and rejected the plaint.

6. Against the said fair and decretal order dated 20.07.2017 made in C.F.R.71 of 2017 in unnumbered O.S., the petitioner has come out with present Civil Revision Petition.

7. From the materials on record, it is seen that the petitioner has presented the plaint on 17.05.2017 seeking for a judgment and decree that the sale deed dated 02.09.2004 is null and void. According to the petitioner, a sum of Rs.1,25,000/- was borrowed from the 2nd respondent, she insisted the petitioner to execute and register Power of Attorney and forced her to sign in the blank stamp papers and green sheets. The 2nd respondent by using the Power of Attorney sold the property by the deed of sale dated 02.09.2004 to the 4th respondent through the 3rd respondent. On these averments, the petitioner sought for declaration that the sale deed dated 02.09.2004 as null and void. The time limit for declaring the document as null and void is three years. The petitioner has not filed suit within three years from the date of sale deed. According to the petitioner, she gave complaint against the 4th respondent and 4th respondent filed

Writ Petition No.7884 of 2007 before this Court not to harass the 4th respondent. From these averments, it is seen that the petitioner is aware of the sale deed of the year 2004 in the year 2007 itself, but she has not filed the suit to set aside the sale deed in the year 2007 itself. Further the petitioner gave another complaint dated 17.07.2010 and as per the order of this Court, an F.I.R. was registered against the respondents. According to the petitioner, handwriting expert has given opinion in her favour in the criminal case. She obtained copy of the opinion on 25.04.2017 and therefore, the suit is not barred by limitation and is within the time. The learned Judge verified the charge sheet and found that the petitioner has given complaint that her Power of Attorney has not paid sale consideration received by him from the 4th respondent. There is no challenge in the criminal case about the Power of Attorney or sale deed. The learned Judge considering these facts, rejected the plaint by the impugned order dated 20.07.2017.

8.The contention of the learned counsel appearing for the petitioner that the question of limitation is a mixed question of law and fact, it can be decided only after appreciating the evidence let in by the parties and petitioner must be given an opportunity to let in evidence to prove that suit is not barred by limitation, is not correct. The Court at the time of taking the plaint on file must verify that the suit is within the time or barred by limitation and suit is maintainable or not. To come to the finding that the suit is barred by limitation, the averments made in the plaint must be considered in its entirety and also the documents filed along with plaint. In the present case, the petitioner is not challenging the Power of Attorney executed by her, which according to the petitioner, 2nd respondent insisted her to execute and register the said Power of Attorney. Further she has not challenged the sale deed dated 02.09.2004 within three years from the date of sale deed or from the date of her knowledge in the year 2007. The learned Judge considering all the above facts in proper perspective, rejected the plaint. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

9.With the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.10.2021

Index : Yes/No
Internet: Yes/No
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To

The Subordinate Judge
Gobichettipalayam.

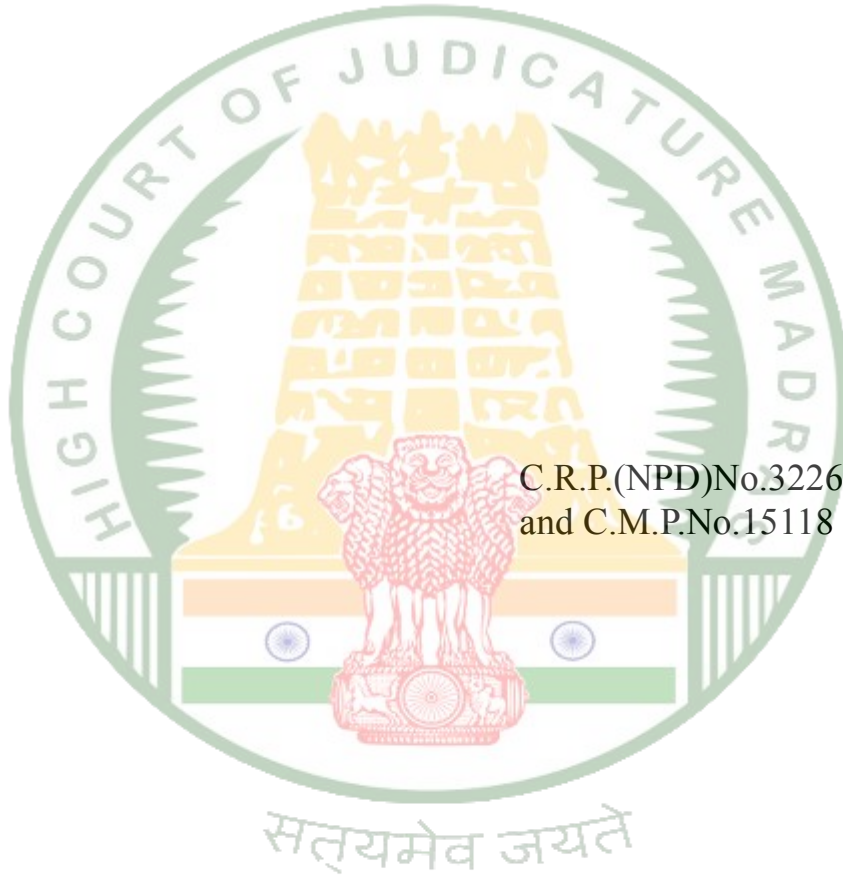


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V.M.VELUMANI,J.

Kj



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