

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.4365 of 2017

and

C.M.P.No.20765 of 2017

1.Kumaran

2.Joseph

...

Petitioners

Vs

1.Thiyagarajan

S/o.Krishnamoorthi Mudaliar (Late)

Vishwanathan (Late)

S/o.Krishnamoorthi Mudaliar (Late)

2.K.Loganathan

S/o.Krishnamoorthi Mudaliar (Late)

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Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair order and decretal order dated 25.02.2016 passed in I.A.No.1049 of 2015 in O.S.No.89 of 2011 on the file of the Subordinate Judge, Dharmapuri.

For Petitioners : Mr.Arunkumar Rajan

For Respondents : Mr.R.Rajeshkumar

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 25.02.2016 passed in I.A.No.1049 of 2015 in O.S.No.89 of 2011 on the file of the Subordinate Judge, Dharmapuri, thereby dismissing the petition seeking permission to withdraw the suit with liberty to file a fresh suit.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for declaration and injunction in respect of the suit property. Pending suit, the petitioners came to understand that the defendants executed various sale deeds in respect of the very same property from various parties. Therefore, they want to withdraw the suit with liberty to file a fresh suit by challenging the sale deed executed by the respondents and also to implead the other purchasers.

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3. The learned counsel for the respondents would submit that in the injunction application filed by the petitioners in the suit, they filed a detailed counter stating that the suit property was originally owned by one

Krishnamoorthy Mudaliar. The said property was mortgaged to one Jayaseelan Chettiar. The suit was filed by the said Krishnamoorthy Mudaliar in O.S.No.98 of 1968 and the same was allowed by a Judgment and Decree dated 29.09.1972. Aggrieved by the same, they also filed an appeal and the same was decreed thereby confirming the order passed by the Trial Court in O.S.No.98 of 1968. Accordingly, the entire property was handed over to Krishnamoorthy Mudaliar and he was in possession and enjoyment of the suit property. After his demise, the respondents/legal heirs were in the possession and enjoyment of the suit property. Thereafter, they sold out the same to proposed various parties by various sale deeds. After knowing these facts, the petitioners filed a suit with wrong particulars and without clean hands. Therefore, they should not be permitted to withdraw the suit with liberty to file a fresh suit. Since, already the properties were sold out to various parties and the petitioners have no title over the property.

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4. According to the petitioners, they purchased the suit property from the said Jayaseelan viz., Karthiyayini by a registered sale deed dated 01.02.2011.

5. A perusal of the records shows that the said Karthiyayini has no title over the suit property and in fact the entire suit property was handed over to the possession of the respondents father viz., Krishnamoorthi Mudaliar by Jeyaseelan. However, the petitioners purchased the suit property by a registered sale deed from the daughter of the said Jayaseelan and filed the present suit. Now, the petitioners came to know about the sale deed executed by the respondents and filed a petition under Order 23 Rule 1 of CPC, seeking to withdraw the suit with liberty to file a fresh suit. It was dismissed by the Court below for the reason that the petitioners failed to file a petition for amendment, even after having the present suit property and also the sale deed by including the prayer of declaration.

6. Considering the above, the order passed by the Court below dated 25.02.2016 in I.A.No.1049 of 2015 in O.S.No.89 of 2011 on the file of the Subordinate Judge, Dharmapuri, is hereby set aside and the Civil Revision Petition is allowed. It is made clear that the legal position of the limitation to challenge the sale deed executed by the respondents in favour

of various parties are very much available to protect the interest of the respondents herein.

7. Order 23 Rule 2 CPC is very clear that in any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation, in the same manner as if the first suit had not been instituted.

8. Therefore, it is needless to say that the petitioners are protected by law. However, the period of pendency of Civil Revision Petition may be excluded while calculating the period of limitation.

18.03.2021

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

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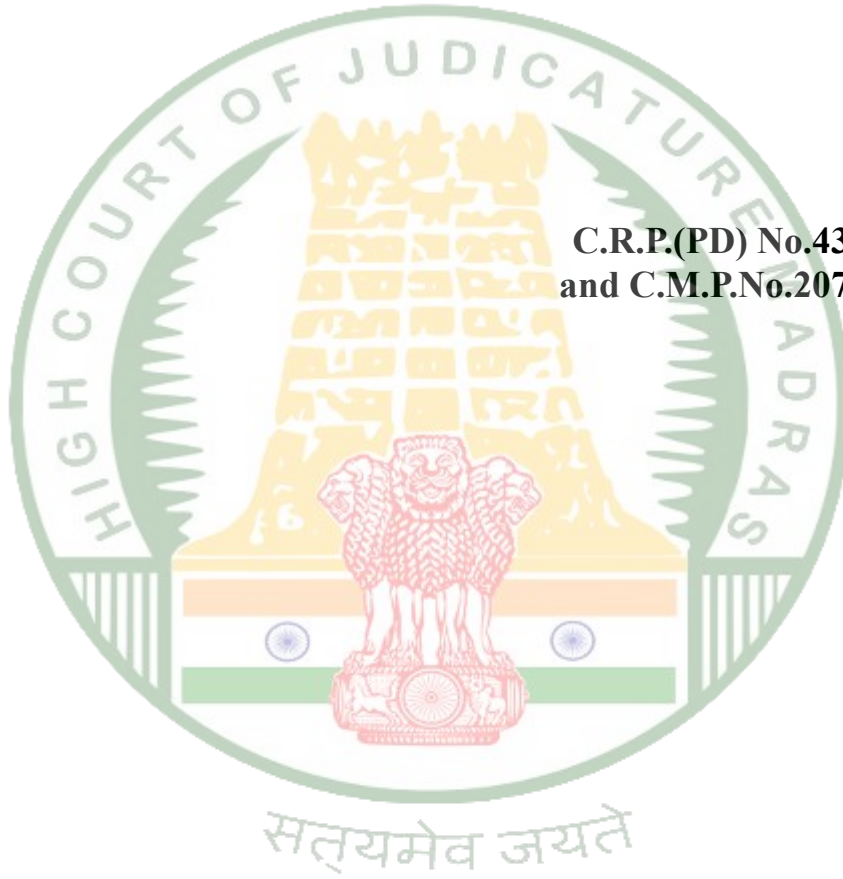
1. The Subordinate Judge, Dharmapuri.
2. The Section Officer,

V.R. Section, Madras High Court, Chennai.

C.R.P.(P.D).No.4365 of 2017
and C.M.P.No.20765 of 2017

G.K.ILANTHIRAIYAN.J,

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