

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

CORAM

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

CRP (NPD) No.3894 of 2018
and
CMP No.21652 of 2018

1. J.Paulraj
2. J.Christhu Raj Petitioners

Vs

1. Bajji Ammal
2. Devan
3. Durai
4. Narayanan
5. Jhansi Rani
6. Ramamoorthi Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the fair and decreetal order dated 05.12.2017 made in I.A.No.133 of 2013 in O.S.No.5 of 2013 on the file of the District Munsif-cum-Judicial Magistrate, Uthukottai.

For Petitioners : Mr.P.Jagadeesan
For R1 to R4 & R6 : No appearance
for R2 : Mr.S.Ramajayam

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 05.12.2017 made in I.A.No.133 of 2013 in O.S.No.5 of 2013

on the file of the District Munsif-cum-Judicial Magistrate, Uthukottai, thereby dismissing the petition filed for rejection of plaint.

2. The revision petitioners are the defendants 6 and 7 in the suit in O.S.No. 5 of 2013 filed by the first respondent herein. The first respondent filed a suit for declaration and mandatory injunction and also recovery of possession in respect of the suit property. Pending suit, the petitioners filed a petition in I.A.No.133 of 2013 for rejection of plaint and the same was dismissed. Aggrieved by the same, the present Civil Revision Petition is filed by the petitioners.

3. The learned counsel for the petitioners submitted that the suit is barred by limitation. Since, the first respondent originally filed a suit in O.S.No.545 of 2002 on the file of the District Munsif Court, Thiruvallur, for declaration as against the respondents 2 to 6 herein. The cause of action in the earlier suit was that the suit property was purchased by one Muniammal by a registered sale deed dated 10.07.1947 and settled the same in favour of her daughter Annammal on 01.10.1959. By fabricating the sale deed the second and third respondent executed a sale deed dated 21.05.2007 in favour of the 4th respondent herein. The

previous suit in O.S.No.263 of 2007 was dismissed for default on 23.06.2011. Whereas, the cause of action in the present impugned suit filed by the first respondent herein is that the 6th respondent herein sold out the suit property in favour of the petitioners herein.

4. Subsequently, the first respondent came to know about the purchase of the suit property by the petitioners and filed the present suit for declaration and title in favour of the first respondent and also recovery of possession in respect of the suit property from the petitioners and also sought for mandatory injunction to remove the construction put up by the petitioners. Therefore, for the very same cause of action a suit was already filed and the same was dismissed. As such, the first respondent cannot file the present suit which is clearly barred under Order 9 Rule 9 of CPC and she also raised another point that when the cause of action arose on 21.05.2007 and the present suit has been laid only in the year 2013. Therefore, it is clearly barred by limitation and the first respondent ought to have approached the Court within a period of three years from the date of original sale deed which was executed by the second and third respondent herein in favour of the fourth respondent.

5. Heard, Mr.P.Jagadeesan, learned counsel for the petitioner and Mr.S.Ramajayam, learned counsel for the second respondent and none appeared on behalf of the respondents 1 to 4 & 6.

6. On perusal of the first suit in O.S.No.545 of 2007 filed by the first respondent herein for the following prayers :-

“ i) To declare that the registered sale deed dated 21.05.2007 in document No.1826 of 2007 at the office of the 5th defendant executed by the 1st and 2nd defendants in favour of the 3rd defendant and consequently declare the registered sale deed dated 14.06.2007 in document No.2188 of 2007 at the office of the 5th defendant executed by the 3rd defendant in favour of the 4th defendant in respect of the suit property measuring to an extent is 0.96 cents as invalid, null and void.

ii) For permanent injunction restraining the defendants 1 to 4, their men, agents, supporters and executors from disturbing the plaintiffs peaceful possession and enjoyment of the suit properties in any manner what so ever.

iii) For permanent injunction restraining the defendants 1 to 4, their men, agents, supporters and executors from alienating the suit properties and or causing any encumbrance over the same in any manner what so ever.

iv) For Mandatory injunction directing the defendants 1 to 4 to revoke the invalid sale deeds at their costs, through a registered instrument at the office of the 5th defendant in respect of the suit property.

v) For cost of the suit and

vi) For such relief and other relieves as this Hon'ble Court may deem fit under the circumstances of this case and thus render justice.”

7. Whereas, the present suit in O.S.No.5 of 2013 filed as against the vendors and also the purchasers i.e., the petitioners herein. The prayers sought for in the present suit are as follows :

“ i) to declare that the plaintiff and 1st defendant is the titular owner of the schedule mentioned property and for recovery of possession of the schedule property from the defendants 6 & 7.

ii) for mandatory injunction directing the defendants 6 & 7 to remove the superstructure raised in the suit property.

iii) for permanent injunction restraining the defendants from creating any kind of encumbrance or alienating the suit properties.

iv) for cost of this suit ; and

iv) to pass further suitable relieves as this Hon'ble Court deems fit in the proper circumstances of this case.”

8. The cause of action arose for the present suit that the 6th respondent herein sold out the suit property in favour of the petitioners herein by a sale deed dated 27.06.2011. In fact, the first respondent sought for the above prayers only as against the petitioners herein. Admittedly, the petitioners were not a party to the early suit filed by the first respondent herein. Therefore, the bar under Order 9 Rule 9 is not applicable to the case on hand. So far as the limitation is concerned, the first respondent prayed for declaration declaring the title in her favour in respect of the suit property and also prayed for recovery of possession from the petitioners alone. Therefore, the cause of action arose for the present suit on 27.06.2011 i.e., the date of purchase by the petitioners.

9. That apart, the cause of action coupled with bundle of facts, it has to be decided only during the trial by let in evidence. The points raised by the petitioners can be considered during the trial and as such the trial Court rightly dismissed the petition for rejection of the plaint. Hence, this Court finds no infirmity or illegality in the order passed by the Court below. However, the Trial Court is directed to dispose of the suit within a period of nine months from the date of receipt of a copy of this order. It is made clear that the Court below is directed to dispose of the suit without any influence of the observations made by this Court.

10. With the above direction, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

No costs.

16.07.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

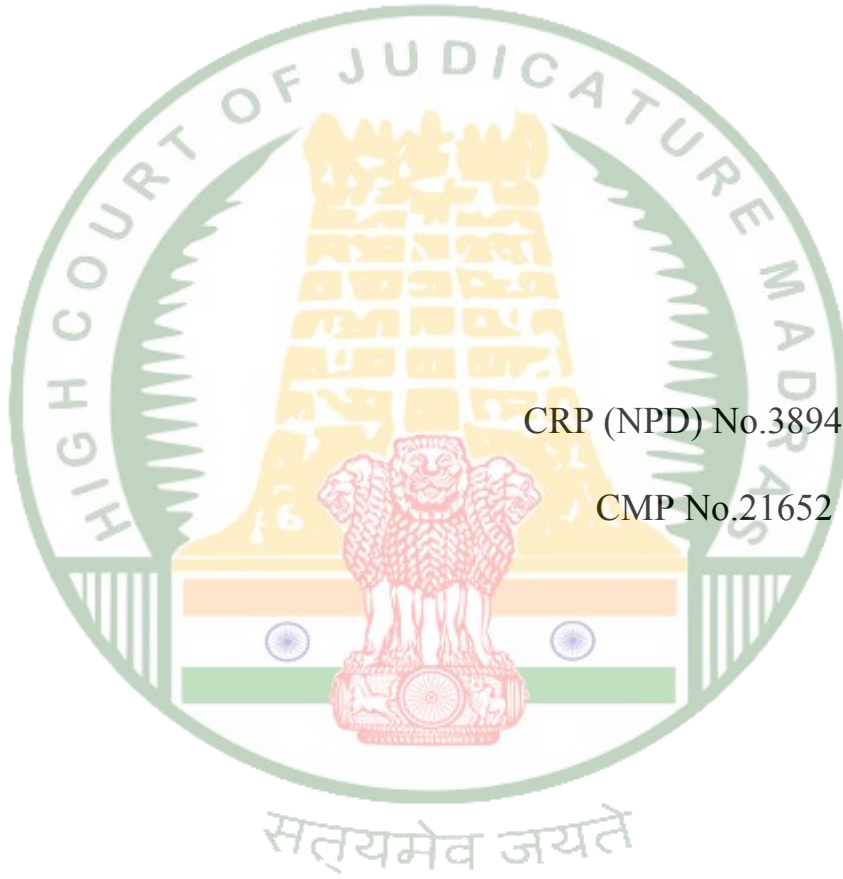
The District Munsif-cum-Judicial Magistrate,
Uthukottai.



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G.K.ILANTHIRAIYAN,J.

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