

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No.3517 of 2018
and C.M.P.No.19692 of 2018

K.R.Madheswaran

... Petitioner

Vs

1.S.Ramesh

2.S.Balaji

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal Order dated 12.07.2018 in I.A.No.269 of 2018 in O.S.No.139 of 2015 on the file of I Additional District Judge, Salem.

For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.A.K.Kumarasamy, SC
for Mr.S.Kaithamalai Kumaran

ORDER

This Civil Revision Petition is filed against the Fair and Decreetal Order dated 12.07.2018 in I.A.No.269 of 2018 in O.S.No.139 of 2015 on the file of I Additional District Judge, Salem, thereby dismissing the application for rejection of plaint.

2. The petitioner is the defendant and the respondents are the plaintiffs in the said suit. The respondents filed the said suit for declaration declaring that the sale deed dated 09.02.1987 executed by Mrs.Malathi in favour of the defendant as null and void and also for permanent injunction in respect of the suit property.

3. Pending the suit, the petitioner filed an application for rejection of plaint on the ground that the said suit is barred by limitation. However, the same was dismissed on 12.07.2018. Aggrieved by the same, the above Civil Revision Petition has been filed.

4. The learned counsel for the petitioner would submit that the sale deed executed on 09.02.1987 by the respondents' mother in favour of the petitioner. The respondents were minors at the time of execution of the sale deed and immediately after attainment of majority they failed to challenge the sale deed. According to the plaintiffs, the suit property was partitioned on 28.03.2008 and after the period of 28 years from the execution of the sale deed, the said suit has been filed.

5. On perusal of the plaint averments, on 28.05.2015 the petitioner came along with the rowdy elements to the property and attempted to remove the shed put up by the respondents / plaintiffs. The respondents / plaintiffs came to understand about the sale deed executed by their mother dated 09.02.1987. According to the plaintiffs, they are in possession and enjoyment of the suit property. On verification of the encumbrance certificate, the possession of the property is with plaintiffs only.

6. That apart, the petitioner is none other maternal cousin's brother of the respondents herein. The suit property was originally purchased by the

plaintiffs' father by the registered sale deed dated 23.08.1978. Immediately, after the purchase of the suit property, their father met with an accident and died. After the death of their father, the mother and the plaintiffs were under the custody and care of the petitioner herein. Therefore only to grab the said suit property, the petitioner registered a sham and nominal sale deed in his favour and as such, they filed the said suit.

7. The plaint cannot be rejected only on the ground of limitation at the threshold. The suit has to be decided after a full-fledged trial by letting in evidence.

8. Therefore, the Court below rightly dismissed the application and this Court finds no infirmity or illegality in the order passed by the Court below.

9. However, the Court below is directed to dispose the said suit within a period of **twelve months** from the date of receipt of a copy of this order.

10. Accordingly, this Civil Revision Petition is dismissed.
Consequently, the connected miscellaneous petition is dismissed. No order
as to costs.

14.07.2021

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
rna

To

The 1st Additional District Munsif Court,
Salem.



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G.K.ILANTHIRAIYAN. J,

rna



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