

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM

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

C.R.P.(PD)No.4006 of 2018  
and C.M.P.No.22191 of 2018

K.Duraisamy ... Petitioner

Vs.

1. K.Kumarasamy

2. K.Muthusamy

... Respondents

**Prayer :-** Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 27.08.2018 in I.A.No.1023 of 2014 in O.S.No.263 of 2014 on the file of the learned District Munsif, Dharapuram.

For Petitioner : Mr.K.Sudhakar

For Respondents : Mr.S.Ramesh

**ORDER**

The Civil Revision Petition is directed as against the fair and decreetal order dated 27.08.2018 passed by the learned District Munsif, Dharapuram, in I.A.No.1023 of 2014 in O.S.No.263 of 2014, thereby dismissing the petition for rejection of plaint.

2. The petitioner is the first defendant and the respondents are the plaintiffs. The respondents filed suit in O.S.No.263 of 2014, for bare injunction in respect of the suit property. The cause of action for filing the suit is that the petitioner's father entered in to a agreement for sale with the second defendant and the respondents herein on 01.12.1993 in respect of the suit property for the total sale consideration of Rs.45,000/-, in which a sum of Rs.30,000/- paid as advance on the date of agreement. The time for execution of sale deed was fixed as eleven months. Accordingly, the defendants ought to have been executed the sale deed on or before 31.10.1994.

3. While it being so, on 10.04.1994, the balance sale consideration was also received by the petitioner's father. Thereafter the entire possession of the suit property handed over to the respondents and they are in possession and enjoyment of the suit property. They also paid the revenue dues to the revenue authorities. When it being so, on 17.11.2010, the petitioner's father died. Utilizing the said circumstances, the petitioner and the second defendant attempted to sell the property to the

third parties. Therefore, the respondents filed the present suit for bare injunction and also claimed right over the suit property under Section 53 of the Transfer of Property Act. In the said suit, the petitioner filed petition in I.A.No.1023 of 2014 to reject the suit. Since the same was dismissed by the Court below, the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner would submit that even according to the respondents they entered into agreement for sale on 01.12.1993 with the petitioner's father and the second defendant. After the period of 21 years, the respondents filed this present suit that too claiming right under Section 53(A) of the Transfer of Property Act. The suit is clearly barred by limitation, since in the agreement for sale, the time for exeuction of sale deed was fixed **only eleven** months and they ought to have been filed the suit within the time from the date of expiry of the agreement viz., 31.10.1994. After the agreement for sale, the agreement holder viz., the respondents have not done any Act in furtherance to the contract as such they cannot claim any benefit under Section 53-A of the Transfer of Property Act. Admittedly, the petitioner and the respondents are brother and

sister and the respondents put their prayer in illusory manner and filed suit as against the co-owner of the property. Therefore, the plaint itself liable to be struck off. In support of his contention, he relied upon the following judgments:-

**i) CDJ 2016 MHC 6064 – Parimalam & ors Vs.**

**P.Mohanraj & anr.**

**ii) CDJ 2016 MHC 6400 – Sudanthiradevi & ors Vs. Jahir**

**Hussain & anr**

**iii) 2020 (4) CTC 471 – Dahiben Vs. Arvindbhai**

**Kalyanji Bhanusali & ors**

5. Per contra, the learned counsel appearing for the respondents would submit that the respondents filed suit for bare injunction. They entered into the agreement for sale on 01.12.1993 with the petitioner's father viz., Kaliappa Gounder. After receipt of the sale consideration, the said Kaliappa Gounder died without executing any registered sale deed. From the date of agreement itself, the respondents are in possession and enjoyment of the suit property. The entire revenue records were mutated in their name and they are paying Kist to the revenue authorities. While being so, the petitioner and the second defendant were trying to execute the sale

deed in favour of the third party. Therefore, the respondents caused legal notice on 12.06.2014 and filed the present suit for bare injunction. Therefore, the entire plain is bundle of facts and it cannot be rejected on its nib and prayed for dismissal of the petition.

6. Heard Mr.K.Sudhakar, learned counsel appearing for the petitioner and Mr.S.Ramesh, learned counsel appearing for the respondents.

7. The petitioner is the first defendant and the respondents are the plaintiffs. The respondents filed suit for bare injunction on the strength of agreement for sale on 01.12.1993. The respondents and the petitioner are brothers and sister. According to the respondents, they entered into the agreement for sale on 01.12.1993 in respect of the suit property with the petitioner's father and his sister viz., the second defendant. After the payment of entire sale consideration, the petitioner's father and his sister failed to execute the sale deed in their favour. While being so, on 17.11.2010, the petitioner's father died without executing any sale deed. Therefore, the petitioner and the second respondent were attempted to

alienate the suit in favour of the third party. After causing legal notice, they respondents filed the suit for bare injunction in respect of the suit property and also claimed right under Section 53A of the Transfer of Property Act.

8. In this regard, it is relevant to rely upon the judgment reported in **2020 (4) CTC 471** in the case of ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali & ors.***, which reads as follows :-

*“15.4..... The plea taken in the plaint that they learnt of the alleged fraud in 2014, on receipt of the index of the Sale Deed, is wholly misconceived, since the receipt of the index would not constitute the cause of action for filing the suit. On a reading of the plaint, it is clear that the cause of action arose on the non-payment of the bulk of the sale consideration, which event occurred in the year 2009. The plea taken by the Plaintiffs is to create an illusory cause of action, so as to overcome the period of limitation. The plea raised is rejected as being meritless and devoid of any truth.*

15.5 The conduct of the Plaintiffs in not taking recourse to legal action for over a period of 5 and ½ years from the execution of the Sale Deed in 2009, for payment of the balance sale consideration, also reflects that the institution of the present suit is an after-thought. The Plaintiffs apparently filed the suit after the property was further sold by Respondent No.1 to Respondent Nos. 2 and 3, to cast a doubt on the title of Respondent No.1 to the suit property.

15.6 The Plaintiffs have placed reliance on the Order of the Collector dated 19.06.2009 with the plaint. The Order reveals that the permission was granted subject to the fulfilment of certain conditions. Clause 4 of the permission states that : “(4) The purchaser of the land/property, shall have to make the payment of the price of the land by cheque and its reference shall require to be made in the Sale Deed.” If the Plaintiffs had a genuine grievance of non- payment of the balance sale consideration, the Plaintiffs could have moved for revocation of the permission granted by the Collector on 19.06.2009. Clause 6 of the

*Order provided that : “(6) On making violation of any of the aforesaid terms, the permission shall automatically be treated as cancelled and, separate proceeding shall be taken up for the violation of the terms and conditions.” The Plaintiffs did not make any complaint whatsoever to the Collector at any point of time. The conduct of the Plaintiffs is reflective of lack of bona fide.*

*15.7 The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action, and bring the suit within the period of limitation. ....*

*The Plaintiffs deliberately did not mention the date of the registered Sale Deed dated 02.07.2009 executed by them in favour of Respondent No.1, since it would be evident that the suit was barred by limitation. The prayer however mentions the date of the subsequent Sale Deed i.e. 01.04.2013 when the suit property was further sold by Respondent No.1 to Respondent Nos. 2 & 3. The omission of the date of execution of the Sale Deed on 02.07.2009 in the prayer clause, was done*

*deliberately and knowingly, so as to mislead the Court on the issue of limitation.*

15.8. The delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963. The suit was instituted on 15.12.2014, even though the alleged cause of action arose in 2009, when the last cheque was delivered to the Plaintiffs. The Plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation. The plaint is therefore, liable to be rejected under Order VII Rule 11 (d) of CPC. Reliance is placed on the recent judgment of this Court rendered in *Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead)* by LR.15 wherein this Court held the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

15.9 The Plaintiffs have also prayed for

*cancellation of the subsequent Sale Deed dated 01.04.2013 executed by Respondent No.1 in favour of Respondent Nos. 2 and 3; since the suit in respect of the 1st Sale Deed dated 02.07.2009 is rejected both under clauses (a) and (d) of Order VII Rule 11, the prayer with respect to the 2nd Sale Deed dated 01.04.2003 cannot be entertained.”*

9. As rightly pointed out by the learned counsel appearing for the petitioner, the respondents filed the suit for bare injunction with illusions of a cause of action. If the plaint created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest state. The Court must be vigilant against any camouflage or suppression and determine whether the litigation is utterly vexatious and an abuse of process of the Court.

10. That apart, Section 53-A of the Transfer of Property Act gives protection to the agreement holder, who was in possession pursuant to the sale agreement. Only a person who had done some act in furtherance of the contract can claim the benefit of Section 53-A of the Transfer of Property

Act. The person in possession must be a person who has performed or willing to perform his part of contract. Having regard to the admitted facts that the respondents are not ready and willing to perform their part of contract within the reasonable time and that the respondents have not filed a suit for specific performance, the suit for bare injunction is not maintainable. The conduct of the respondents would clearly disclose that they are not willing to perform their part of contract.

11. Further, they also failed to comply the other conditions for invoking Section 53-A of the Transfer of Property Act. Therefore, the agreement holders are not entitled to any protection by filing the suit for injunction restraining the lawful owner from interfering with his peaceful possession and enjoyment. That apart, the plaintiffs and the defendants are brothers and sister. Therefore, they cannot sought for injunction as against the co-owner, since the petitioner's father died on 17.11.2010 itself. Therefore, the present suit is nothing but abuse of process of law and it is liable to be rejected.

12. Accordingly, the Civil Revision Petition stands allowed and the order dated 27.08.2018 passed by the learned District Munsif, Dharapuram, in I.A.No.1023 of 2014 in O.S.No.263 of 2014 is set aside and the plaint in O.S.No.263 of 2014 is hereby rejected. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

14.06.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The District Munsif,  
Dharapuram.
2. The Section Officer,  
V.R. Section,  
Madras High Court,  
Chennai.

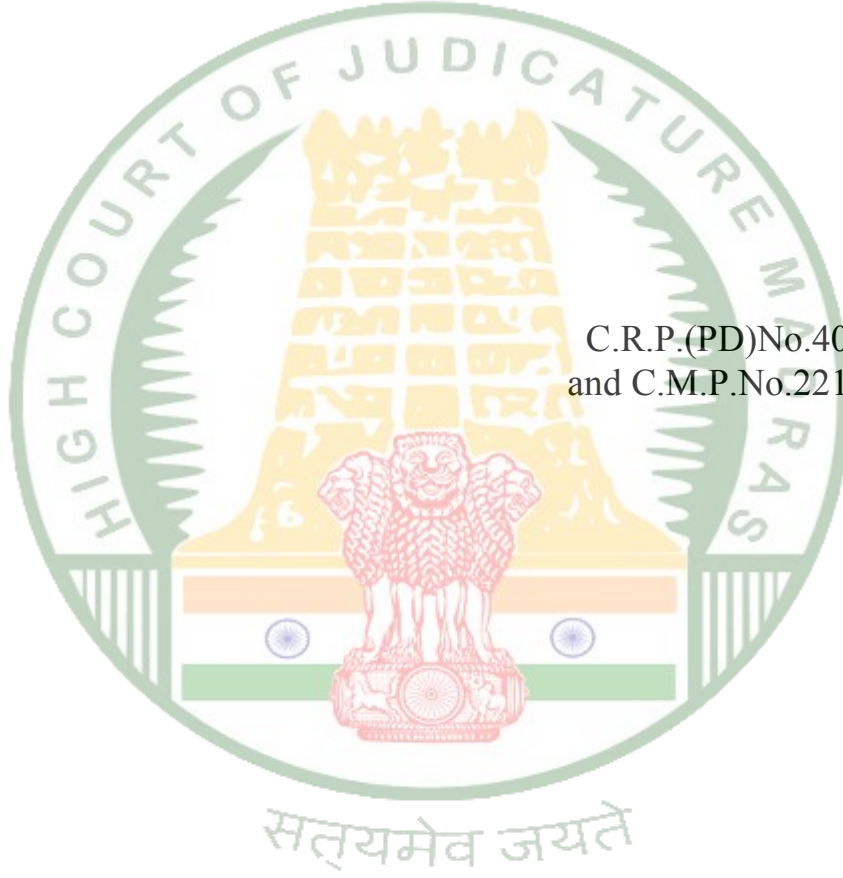


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*C.R.P.(PD)No.4006 of 2018*

**G.K.ILANTHIRAIYAN, J.**

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