



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.04.2021

Pronounced on : 28.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.MD).No.680 of 2021

and

C.M.P(MD).No.3728 of 2021

A.Jaithoon Beevi : Petitioner/Petitioner/4th Defendant
Vs.

1.S.A.Kannan : 1st Respondent/1st Respondent/Plaintiff

2.Syed Ali Fathima

3.Minor.Mohamed Ashik

4.Minor.Rajbunisha : 2 to 4 Respondents/2 to 4 Respondents/
1 to 3 Defendant

PRAYER:- Civil Revision Petition is against the fair and decreetal order dated 26.11.2018 passed in I.A.No.34 of 2016 in O.S.No.163 of 2013 on the file of the learned Principal Subordinate Judge, Dindigul.

For petitioner : Mr.H.Lakshmi Shankar

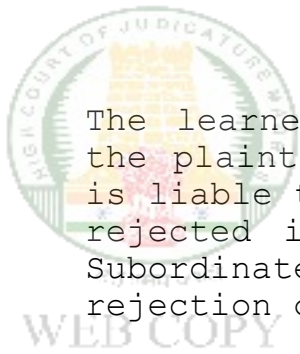
ORDER

This revision is directed against the order passed in I.A.No.34 of 2016 in O.S.No.163 of 2013, dated 26.11.2018 dismissing the petition filed under Order 7 Rule 11(d) of the Code of Civil Procedure for rejection of plaint.

2.The revision petitioner is the fourth defendant and the first respondent/plaintiff has filed a suit in O.S.No.163 of 2013 claiming the relief of specific performance of the agreement dated 02.03.2007 or in alternative for refund of the advance amount paid by the plaintiff. The main contention of the revision petitioner is that the sale agreement was alleged to have been executed on 02.03.2007, that the vendor had died on 25.06.2007 and that the suit filed in the year 2013 was barred by limitation as the suit has been filed after six years.

3.It is not in dispute that the alleged agreement dated 02.03.2007 does not contain any specific time for performance.

4.Considering the above, the learned trial Judge has rightly observed that the limitation plea raised is a mixed question of law and facts and the same has to be gone into, at the trial. Moreover, the plaintiff has also claimed the alternative relief for refund of advance amount and the trial Court has rightly pointed out that since the plaintiff is having 12 years period, the question of rejecting the plaint on the ground of limitation does not arise.



The learned counsel for the revision petitioner would submit that the plaint with respect to the main relief of specific performance is liable to be rejected. It is settled law that a plaint cannot be rejected in part. Hence, the decision of the learned Principal Subordinate Judge, Dindigul, in dismissing the application for rejection of plaint cannot be found fault with.

5. The learned counsel for the revision petitioner would submit that in case, if this Court is not accepting their stand, then the trial Court may be directed to consider the limitation plea of the revision petitioner at the trial and that the trial Court may also be directed to dispose of the suit within the time fixed by this Court. I find some merit in the said contentions and since the suit is pending from the year 2013 and it is more than 7 years old, this Court is of the view that necessary direction is to be issued for the early dispose of the case.

6. In the result, the Civil Revision Petition is dismissed. The trial Court is required to frame necessary issue with respect to the plea of limitation and consider the same at the trial and further directed to dispose of the suit in O.S.No.163 of 2013 within a period of five months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Principal Subordinate Judge, Dindigul.

Copy to

The Registrar Judicial,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-17055[F] dated 22/04/2021)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-17987[F] dated 29/04/2021)

C.R.P.MD).No.680 of 2021 and
CMP(MD).No. 3728 of 2021

ARK(CO)

KB(12.05.2021) 2P 5C

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