



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (PD) (MD) No.1967 of 2014

and

MP(MD) No.1 of 2014

WEB COPY

Rathinavalli ... Petitioner/Appellant/Defendant

-vs-

Nagarathinam Konar ... Respondent /Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India , to set aside the fair and decreetal order dated 16.04.214 in I.A.No.202 of 2012 in O.S.No. 97 of 2011 on the file of the learned Subordinate Judge, Kulithalai.

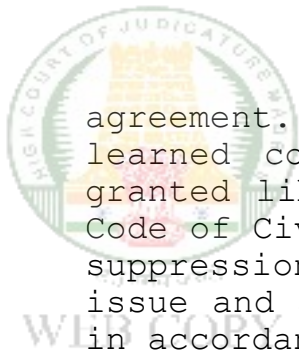
For Petitioner : Mr.Raguvaran Gopalan

For Respondent : Mr.K.Govindarajan

O R D E R

The present Civil Revision Petition has been filed to set aside the fair and decreetal order dated 16.04.214 in I.A.No.202 of 2012 in O.S.No. 97 of 2011 on the file of the learned Subordinate Judge, Kulithalai.

2. The learned counsel for the petitioner would submit that the present petition has been filed against the dismissal of the petition filed under Order 7 Rule 11 of the Civil Procedure Code . He would fairly submit that the petition has been filed on the ground of limitation, whereas the trial Court had dismissed the petition stating that the question of limitation is a mixed question of law and facts and it has to be taken during the time of trial. He would further submit that there is no sale agreement between the plaintiff and the defendant. The plaintiff had issued notice dated 27.08.2007 and the petitioner/defendant sent a fitting reply dated 10.09.2007 to the plaintiff. The plaintiff had suppressed the same in the plaint and even as per notice dated 27.08.2007, the plaintiff had stated that on 21.04.2007 there was an agreement between the plaintiff and the defendant that on or before 24.07.2007 the defendant should pay a sum of Rs. 1,36,000/- along with Rs.25,000/- totalling Rs.1,61,000/- and in case of failure has to execute sale deed for the suit property on or before 30.07.2007. Reply notice dated 10.09.2007 was issued to the above notice dated 27.08.2007, where the petitioner/defendant had denied the agreement of sale , thereby proving that it was only a loan



agreement. Further the suit is hopelessly barred by limitation. The learned counsel would further submit that the petitioner may be granted liberty to file a petition under Order 14 Rule 2(2) of the Code of Civil Procedure to take up the issue of limitation and the suppression of earlier exchange of legal notices as preliminary issue and a direction may be issued to the trial Court to decide it in accordance with law.

3. The learned counsel for the respondent would submit that trial Court rightly finding that question of limitation is mixed question of law and facts had rightly dismissed the petition filed Under Order 7 Rule 11 of the Code of Civil Procedure. However he would further submit that in the event the defendant filing petition under Order 14 Rule (2) of the CPC, the respondent/plaintiff should be given liberty to contest the same.

4. In view of the submissions made the Civil Revision Petition stands dismissed. No costs. Consequently connected miscellaneous petition is also closed. However liberty is granted to the petitioner / defendant to file petition under Order 14 Rule 2(2) of the Code of Civil Procedure and the trial Court shall dispose of the same as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To:

The Subordinate Judge, Kulithalai

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-28564[F] dated 08/09/2021)

C.R.P. (PD) (MD) No.1967 of 2014

and

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07.09.2021

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