



C.R.P.(PD).No.362 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.362 of 2022

and

C.M.P.No.1863 of 2022

Sarala

...Petitioner/3rd defendant
/Revision Petitioner

-V-

Kannan

...Respondent/Plaintiff
/Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 08.09.2021 passed in I.A.No.261 of 2018 in O.S.No.695 of 2017 on the file of the learned I Additional Sub Judge, Villupuram.

For Petitioner : Mr.N. Suresh



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C.R.P.(PD).No.362 of 2022

ORDER

The 3rd defendant whose application to reject the Plaint filed in I.A.No.261 of 2018 is the revision petitioner before this Court.

2.The plaintiff had filed the suit for the following reliefs:

“(a)declaring that the plaintiff is entitled to the suit property and in consequence thereof, granting permanent injunction in favour of him restraining the defendants, their men, agents and their servants from anyway / manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

(b)declaring that the revocation deed from 27.10.1998 under Doc.No.1383/1998 in Sub-regy, Valavanur made by the said Ramasamy Kounder is null and void, as also not at all binding on the plaintiff.



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(c)declaring that the register Sale Deed dated 27.10.1998 under Doc.No.1385/1998 in Sub Registry, Valavanur made in favour of the 2nd defendant by the said Ramasamy Kounder is null and void, as also not at all binding on the plaintiff.

(d)declaring that the registered Sale Deed dated 27.10.1998 under Doc.No.1386/1998 in Sub-Registry, Valavanur in favour of the 1st defendant is null and void, as also not at all binding on the plaintiff.

(e)declaring that the registered Sale Deed dated 09.02.2017 under Doc.No.167/2017 made in favour of the 3rd defendant by the 1st defendant is null and void, as also not at all binding on the plaintiff.”

3.The plaintiff has set out that the property belonged to one Ramasamy Gounder under a Sale Deed dated 24.10.1966. On 10.07.1998, he had executed a registered Settlement Deed in favour of



his son, the plaintiff. The Settlement was accepted and acted upon by the plaintiff. The plaintiff has been in physical possession of the property and has obtained a domestic service connection in his name. There are two other sons for the said Ramasamy Kounder who have been arrayed as defendants 1 and 2. These defendants colluded with each other and had instigated Ramasamy Kounder to revoke the Settlement Deed dated 27.10.2008 executed by him in favour of the petitioner.

4.The plaintiff's specific case is that he had come to know about the said revocation only in the 1st week of February 2017 on the basis of which other documents had been created. All these documents came to the knowledge of the plaintiff in the 1st week of February 2017 and immediately, the suit has been filed.

5.The 3rd defendant has filed this application for rejecting the Plaint on the ground that the suit is barred by limitation as the



document has been executed as early in the year 1998 and that the suit has been filed after a gap of 18 years and therefore, is barred by limitation. The Court Fee paid was not under Section 40 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955, but under Section 25(d) of the said Act.

6.The 3rd defendant claimed to have purchased the property from the defendants 1 and 2. She would contend that she is in possession and enjoyment of the same. Therefore, on the grounds of limitation and Court Fee, the petitioner sought the Plaint to be rejected.

7.The plaintiff has clearly and categorically set out in his Plaint that he had come to know about the document only in the 1st week of February 2017. The suit has been filed in the month of November 2017 itself. Therefore, within a few months of his coming to know about the deeds the suit has been filed.



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8.The issue of limitation is a mixed question of fact and law which can be established only through trial. The revision petitioner cannot seek to throw out the plaintiff at the threshold, particularly, when he has traced his title to the property to the Settlement Deed executed by his father.

9.As regards the Court-Fees, this is not a ground for rejecting the Plaint. That apart, since the plaintiff is not a party to the documents the Court-Fees has to be paid under Section 25(d) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 and not under Section 40. Therefore, the grounds pleaded for rejecting the Plaint cannot be sustained and the trial Court has rightly dismissed the said application.

Accordingly, this Civil Revision Petition is dismissed. Considering the fact that the suit is of the year 2017, a direction is



C.R.P.(PD).No.362 of 2022

given to the learned I Additional Sub Judge, Villupuram to dispose of the suit O.S.No.695 of 2017 as expeditiously as possible. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

17.02.2022

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
mps

To

The I Additional Sub Judge,
Villupuram.



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P.T. ASHA, J,

mps

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