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CRP(PD).Nos.2559 & 2915 of 2016 and
C.M.P.Nos.13088 & 14885 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

CRP(PD).Nos.2559 & 2915 of 2016
and
C.M.P.Nos.13088 & 14885 of 2016

CRP(PD).No.2559 of 2016

S.Thiyagarajan

.. Petitioner

Vs.

Loganathan

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.716 of 2013 in O.S.No.36 of 2013 dated 07.03.2015 pending on the file of the Additional District Munsif, Alandur, Kancheepuram District.

For Petitioner : Mr.R.C.Manoharan

For Respondent : Mr.S.Selvaraju



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CRP(PD).No.2915 of 2016

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S.Thiyagarajan

.. Petitioner

Vs.

Govindammal

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.1053 of 2013 in O.S.No.458 of 2013 dated 07.03.2015 pending on the file of the Additional District Munsif, Alandur, Kancheepuram District.

For Petitioner : Mr.R.C.Manoharan

For Respondent : Mr.M.A.Siva Kumaran

COMMON ORDER

The revision petitioner herein are the 4th and 2nd defendant in the suits in O.S.Nos.36 and 458 of 2013 respectively on the file of District Munisf, Alandur.

2. Originally, both the plaintiff in O.S.Nos.36 and 458 of 2013 filed the respective suits for declaration to declare the sale deeds stands in



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the name of some of the defendants as null and void and also for permanent injunction in respect of the suit property as described in the plaint schedule.

The said suit was contested by the defendants stating that the suit property not belongs to the plaintiff and the contesting defendants are in possession of the property as per the purchase made from their vendors.

3. During the pendency of the proceedings, the petitioner herein / 4th and 2nd defendant filed I.A.Nos.716 and 1053 of 2013 in both the suits under Order VII Rule 11 of Code of Civil Procedure, to reject the plaint in O.S.Nos.36 and 458 of 2013, stating that the present suits were filed by the plaintiff after lapse of three years from the date of knowledge as to the execution of the sale deeds, therefore, there is no cause of action to file a present suits. Besides, they also contend that the relief claimed by the plaintiff are barred by law for the reason that the contesting defendants are in possession of the property. Having knew about the fact, the plaintiff did not approach the Court within three years from the date of knowledge. Accordingly, the suit is barred by limitation.



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4. The said application was contested by the plaintiff by submitting that he is in common possession and enjoyment of the respective shares in the suit property and the defendants caused interference. Hence, he approached the Court and he has no knowledge about the alleged sale deed in the year 1975 as well as the subsequent sale deed and settlement deed through which the defendants claim right in the property. Therefore, to protect his right, in respect of immovable property, he approached the Court in right time. Hence, he prayed for dismissal of the applications to reject the plaint.

5. On considering both sides submissions as well as the documents, the trial Judge elaborately discussed about the contention of the parties in the suit and held that whether, the plaintiff is having knowledge about the execution of the sale deeds prior to filing of the suits is a matter of fact which needs oral evidence without which, it cannot be decided and also held that the alleged exchange of notice between the parties cannot be sufficient to decide the limitation aspect for which the Court has to frame



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issues with regard to limitation during trial. Accordingly, the said applications were dismissed. Challenging, the said finding, the fourth and second defendant in the suits in O.S.Nos.36 and 458 of 2013 preferred this revision.

6. Learned counsel appearing for the revision petitioner argued that the trial Judge failed to appreciate the fact that already in the year 2008, the defendant purchased the property and issued a notice to the plaintiff and from that day onwards, the plaintiff is having knowledge about the execution of the sale deeds but he has not filed the suit in time. Only in the year of 2013, nearly 5 years later, he approached the Court which itself clearly indicates that he has not approached the Court within 3 years. On the basis of the record, the trial Court ought to have reject the plaint, instead dismissed the application seeking rejection of the plaint erroneously and prayed to set aside the same. To support his contention, he relied on the decision in *T.Arivandandam Vs. T.V.Satyapal* reported in (1977) 4 SCC 467 stating that the cause of action for the suit already arose much earlier in the year of 2008 but the plaintiff approached the Court in the year 2015 as



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such it is clearly barred by limitation and he prayed to set aside the findings of the trial Judge.

7. By way of reply, the learned counsel appearing for the plaintiff submits that till date the plaintiff is in possession of the suit property and he is not aware of the alleged sale deeds executed in the year 1975. Besides, the 4th defendant herein claiming right over the property based upon a sale deed said to have been executed by the vendor who purchased the property based on an oral sale as such, the sale in favour of the defendant is not maintainable in law. The vendor of the defendants have no title over the property and all those facts could be proved only by examining the witnesses during trial. When interference was caused in the plaintiff's enjoyment, he approached the Court in the year of 2016. Furthermore, the denial of title in respect of the sale deed also to be proved by adducing both the oral and documentary evidence, which cannot be decided by mere allegations in the affidavit and the same was rightly appreciated by the trial Court, which needs no interference.



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8. On considering both submissions and on perusal of the plaint, it reveals that the plaintiff filed the two suits for the relief of declaration to declare the sale deeds standing in the name of the contesting defendants in the year of 2008 as null and void. Further, the plaintiff also contend that he is in possession of the property and the defendants caused interference, hence, he approached the Court in the year 2016. But the contention of the 4th defendant is that in the year 2008, itself he issued a notice to the plaintiff and he is aware about the sale deed. However, without taking any steps to set aside sale deed, the present suits have been filed nearly after three years of the period of limitation. But on considering the documents, it is revealed that after exchange of notice, the sale deeds came into force and as per the contention of the plaint averments, the plaintiff was in possession of the suit property over which defendants caused interference and therefore, he has filed the suit in the year 2016.

9. Furthermore, with regard to title of the contesting defendants there is mentioning about the oral sale but the title of the vendors of the 4th



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defendant being denied by the plaintiff. So, the title of the property also to be decided only after adducing both oral and documentary evidence. All the allegations raised in the affidavit of the fourth defendant to reject the plaint needs to be decided by adducing evidence and not based on the mere allegations. Hence, the trial Judge rightly dismissed the petitions, which needs no interference.

10. Accordingly, the common order dated 07.03.2015 passed in I.A. Nos. 716 of 2013 in O.S.No.36 of 2013 as well as I.A.No.1053 of 2013 in O.S.No.458 of 2013 both on the file of the Additional District Munsif, Alandur, Kancheepuram District is confirmed. Consequently, the Civil Revision Petitions are dismissed and the connected miscellaneous petitions are also closed. No costs. The trial Court is directed to proceed with the matter and dispose it, within eight months from the date of receipt of copy of this order.

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To
The Additional District Munsif, Alandur,
Kancheepuram District.



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T.V.THAMILSELVI, J.

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