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C.R.P.(PD) No.1429 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.R.P.(PD).No.1429 of 2022

and

C.M.P.No.7383 of 2022

1.Sri Venkateshwara Capital Finance Institution,
Represented by its Managing Partner R.P.Rajendiran,
Door No.30/169, Thuraiur Main Road,
Namakkal Town,
Namakkal Taluk,
Namakkal District.

And

Door No.96H, Pon Kailash Garden,
Kuttaimela Theru,
RP Puthur Road,
Namakkal Town.

2.Balaji Capital Finance Institution,
Represented by its Managing Director R.P.Rajendiran,
Door No.37/I-18 A R.K.S.Building,
Paramathi Road,
Namakkal Town,
Namakkal Taluk and District,

And

Door No.96H, Pon Kailash Garden,
Kuttaimela Theru,
RP Puthur Road,
Namakkal Town.

3.R.P.Rajendiran



C.R.P.(PD) No.1429 of 2021

4.S.Kiruthigan Lokesh

5.K.Mani

6.V.MNavaladi

... Petitioners

Vs.

K.Kathirkumar

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.279 of 2021 on the file of the learned Principal District Judge, Namakkal.

For Petitioners : Mr.R.Rajarajan

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed to strike off the plaint in O.S.No.279 of 2021 on the file of the learned Principal District Judge, Namakkal.

2. The petitioners are the defendants 1 to 6. The respondent/plaintiff has filed the suit for declaration declaring the sale deed dated 06.05.2016 in respect of the suit property as null and void. The suit has been filed in the year 2021.



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3. The learned counsel for the petitioners submitted that the suit itself is not maintainable on the basis of the pleadings therein. The learned counsel for the petitioners further submitted that the pleadings show that the impugned sale deed has been executed as early as on 06.05.2016 itself and the suit has been filed only in the year 2021 and hence, the suit is barred by limitation. It is further submitted that the learned trial Judge had omitted to notice that the suit itself is barred by limitation and taken the suit on file and hence it is liable to be stricken off.

4. The learned counsel for the petitioners submitted that the averments itself show that the plaint barred by limitation and hence it has to be struck off.

5. In support of his contentions, the learned counsel for the petitioner cited the following judgments :

1. ***Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by Lrs.,*** reported in ***(2020) 16 SCC 601*** ; and

2. ***S.Kanakaraj v. S.Ramalingam*** in ***C.R.P.(PD).No.1699 of 2015,***



dated 07.03.2018.

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6. In the above judgments, it is held that preferring the plaint will not entitle the plaintiff to get the plaint numbered straight away. From the judgment held in C.R.P.(PD).No.1699 of 2015 it is clear that the background of the facts of the case involved has to be looked into and even as per the averments made in the plaint, the contradictory stands taken by the plaintiff is visible, it has to be presumed that the maintenance of the plaint can be only by way of clever drafting.

7. However, in the case in hand, plaintiff has specifically alleged that he got to know about the existence of the sale deed only on 11.11.2021. On perusal of the pleadings in the plaint, it is seen that the respondent/plaintiff has alleged that on 09.11.2021, when he approached the 3rd defendant for discharging the mortgage, he came to know about the impugned sale only on 11.11.2021.

8. The learned trial Judge seems to have taken the plaint on the basis of the allegations and averments made in the plaint, by taking into consideration of the fact that the point of limitation will run from the date



when the plaintiff gets the knowledge about the sale deed. However, the defendants are not deprived of their remedy by way of filing the petition under Order VII Rule 11 C.P.C., to reject the plaint, if at all there are sufficient materials to show that the plaint is not maintainable even before the start of the trial.

9. As of now, on the basis of the pleadings made, I do not find any factual or material infirmity in taking the plaint on file. Accordingly, the Civil Revision Petition is dismissed and in the event of filing the petition under Order VII Rule 11 C.P.C., by the defendants, the learned trial Judge is directed to dispose of the suit irrespective of the observations made herein and without being influenced by the same. There shall be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
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R.N.MANJULA, J.,

ssn

To

1. The Principal District Judge,
Namakkal.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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