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C.R.P(PD).No.1978 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.1978 of 2022
and C.M.P.No.10111 of 2022

T.Kamalakannan

...

Petitioner

..Vs..

F.Ashok Kumar

...

Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, to allow the C.R.P. by setting aside the impugned fair and decretal orders dated 08.09.2017 in I.A.No.306 of 2017 in O.S.No.14 of 2016 on the file of the Learned Principal District Judge at Chengalpattu.

For Petitioner : Mr.S.Subramanian



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ORDER

This Civil Revision Petition has been preferred challenging the order dated 08.09.2017 made in I.A.No.306 of 2017 in O.S.No.14 of 2016 passed by the learned Principal District Judge at Chengalpattu.

2.The Revision Petitioner is the Defendant in the suit filed by the Respondent/Plaintiff for preliminary decree for recovery of money on an equitable mortgage. Originally the suit was filed before the learned XIX Additional City Civil Judge, Chennai in O.S.No.7058 of 2014 and on a return endorsement from the Court that it should be presented before the appropriate Court, the Plaint was re-presented before the Principal District Judge, Chengalpat and got renumbered as O.S.No.14 of 2016. During the pendency of the suit, the Revision Petitioner had filed a petition under Order VII Rule 11 (b) of Civil Procedure Code to reject the Plaint on the ground that the suit is barred by limitation. The said petition was dismissed. Aggrieved over this, the Revision Petitioner/Defendant has preferred this revision.



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3. The learned counsel appearing for the Petitioner submitted that while rejecting the petition, the learned Trial Judge has made an observation as to the bonafideness on the part of the Respondent/Plaintiff in presenting the Plaint to the right forum at a belated stage and the suit is also barred by limitation and hence the order of the learned Principal District Judge should be reversed.

4. Admittedly the suit was filed in the year 2014 before the XIX Additional City Civil Judge, Chennai within the period of limitation. When the Plaint was returned to be presented before the right forum, the suit was pending on the file of XIX Additional City Civil Judge, Chennai. Only subsequent to that, it got returned and re-presented before the Principal District Judge, Chengalpet. The submission of the learned counsel for the Petitioner is that since the Plaint is presented in the year 2016 and the limitation for a mortgage suit is only 12 years from the date of mortgage, the suit is barred by limitation. However, Section 14 of the Limitation Act comes to the rescue of the Plaintiff who prosecuted the



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suit before the wrong forum. The said provision would state that the period during which proceeding was pending before the wrong forum can be excluded in computing the period of limitation.

5. But the contention of the learned counsel for the Petitioner is that before the starting of the trial itself due diligence on the part of the Plaintiff cannot be presumed and hence the suit ought to have been rejected as not maintainable. It is needless to state that the fact about 'due diligence' is a question of fact. If the Revision Petitioner wanted to reject the suit even before the commencement of trial, it would amount to rendering a finding that there was no due diligence. That will prejudice the interest of the Plaintiff, even if the case is admitted for trial. The Revision Petitioner/Defendant is at liberty to bring out during trial that the plaintiff wantonly delayed the proceedings and lost the limitation and that he will not get the benefit under Section 14 of the Limitation Act.



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6. Since the Trial Judge has properly appreciated the possibility about Sections 14 of the Limitation Act on the face of it at the time of admitting the suit, I find not reason for interference.

7. Accordingly, the Civil Revision Petition is dismissed and the order dated 08.09.2017 made in I.A.No.306 of 2017 in O.S.No.14 of 2016 passed by the learned Principal District Judge, Chengalpattu, is hereby confirmed. No Costs. Consequently, connected Miscellaneous Petition is closed.

29.06.2022

arr

Index: Yes No

Speaking Order: Yes/No



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R.N.MANJULA,J.

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To

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

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