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C.R.P.No.3097 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3097 of 2022

K.C.Ramu

... Petitioner

VS

C.K.Anbalagan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to issue suitable order/direction under Article 227 of the Constitution of India, directing the learned Additional Judge No.III, Thirupathur, to take the suit filed in O.S.SR.No.1592 of 2022 dated 01.06.2022 on the file.

For Petitioner : Mr.R.Selvakumar

ORDER

The Civil Revision Petition is filed seeking a direction to the learned Additional Judge No.III, Thirupathur, to number the plaint in O.S.SR.No.1592 of 2022.

2. In view of the limited prayer made in the suit, this Court is inclined



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to dispose the revision, even without notice to the respondent.

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3. The revision petitioner herein filed a suit for specific performance of sale agreement dated 24.02.2010. The plaint was presented on 01.06.2022 and the same was returned by the concerned Court on 07.06.2022 pointing out the following two defects:-

- (i) Deficit court fee
- (ii) How the suit is maintainable.

4. The plaint was resubmitted by the petitioner on 15.07.2022 paying the deficit court fee.

5. As far as the second defect is concerned, the learned counsel for the petitioner/plaintiff submitted an explanation that as per the endorsement found in the 2nd page of sale agreement, no time limit was fixed for execution. The extension of agreement was not for a limited period. Therefore, when the time was not fixed under the agreement, the limitation for filing the plaint starts only from the date of denial of execution.



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WEB COPY 6. As per the averment found in the plaint, the petitioner/plaintiff issued legal notice to the respondent calling upon him to execute the sale deed after receiving the balance of sale consideration on 05.02.2022. The respondent herein sent a reply notice on 16.05.2022 denying the execution of the sale agreement. Treating the same as starting point of limitation, the suit has been presented. The question of limitation is the mixed question of law and fact which need not be gone into in detail at the time of numbering the plaint.

7. In view of the averments made in the plaint that the respondent denied the execution in his reply notice dated 16.05.2022, the suit has been filed within 3 years from the date of denial by taking second limb of Article 54 of the Limitation Act. Whether the 1st limb of Article 54 is applicable to the facts of the case or not is a question which has to be gone into at the time of final disposal of the suit.

8. Therefore, the Court below can very well number the suit leaving the question of limitation open to challenge.



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WEB COPY 9. In view of the discussion made above, the learned Additional Judge No.III, Thirupathur is directed to number the plaint in O.S.SR.No.1592 of 2022 and proceed with the suit in accordance with law. It is made clear that the respondent is entitled to raise the question of limitation and the said objection has to be decided at the time of final disposal of the suit along with other issues.

10. Accordingly, the Civil Revision Petition is disposed of. No costs.

29.09.2022

Index : Yes / No

Internet : Yes / No

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Note: Registry is directed to return the original plaint and original sale agreement viz., Plaint Document No.1 to the learned counsel for the petitioner.



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To

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The Additional Judge No.III,
Thirupathur.



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S.SOUNTHAR, J.

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