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CRP.Nos.3469 & 3478 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.3469 & 3478 of 2018

and

C.M.P. Nos. 19430 & 19463 of 2018

1. J. Samuvel Ponnaiah,
2. M. Raja Victor,
3.S.Viswanathan,
4. Samson Papli,
5. Gul J. Panjabi,
6. S. Paulraj,
7. J.C. Prakash
Petitioners

..

(In Both petitions)

Versus

1.The Salem District (Tamil) Baptist Trust Society,
through its present Secretary David Livingston,
64, SBM Compound, Trichy Road, Namakkal Town.

2. John

.. Respondents
(In both petitions)

Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, to struck off the plaint in O.S. No.187 of 2013 and to set aside the fair and decreetal order dated 04.10.2018 passed in I.A.



Nos.719 of 2018 in O.S.No.187 of 2013 on the file of the Principal Subordinate Judge, Namakkal.

For Petitioners : Mr.R. Nalliyappan

For Respondent 1 : Mr.C. Jagadish

For Respondent 2 : No Appearance
(In both petitions)

COMMON ORDER

These Civil Revision Petitions have been filed seeking to struck off the plaint in O.S. No.187 of 2013 and to set aside the fair and decreetal order dated 04.10.2018 passed in I.A. Nos.719 of 2018 in O.S.No.187 of 2013 on the file of the Principal Subordinate Judge, Namakkal.

2. The 1st respondent herein is the plaintiff and the petitioners herein are the Defendants 1 to 3, 5 to 8 and the 2nd respondent herein is the 4th defendant in the original suit.

3. The case of the petitioners is that the 1st respondent herein filed the suit in O.S. No.187 of 2013 seeking to set aside the Decree dated



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06.08.2003 passed in O.S. No.473 of 2003 on the file of the Subordinate Court, Namakkal and permanent injunction against the defendants. Pending the suit, the defendants 1 to 3, 5 to 8 have filed I.A. No.719 of 2018 before the Trial Court under Order 7 Rule 11 and Section 151 C.P.C to reject the Plaintiff. Having heard both sides and perused the records, the Trial Judge by order dated 04.10.2018 dismissed the aforesaid application holding that the issue of limitation can be decided only in the Trial and the plaint cannot be rejected on the said ground. Being aggrieved by the aforesaid dismissal order, they have filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioners would submit that based on the sale agreement dated 21.11.1984 executed in between the 1st respondent and the petitioners 1 to 3 herein, the petitioners have filed the suit for specific performance in O.S. No.473 of 2003 on the file of the Sub-Judge, Namakkal. Due to absent on the side of the defendants, the Trial Court passed Exparte Decree and Judgment dated 05.07.2004 in favour of the plaintiffs/petitioners 1 to 3 herein. Subsequent to the above, the petitioners have filed the execution petition in REP No.23 of 2013



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seeking for delivery of possession. While the Delivery was ordered by the execution Court, the 1st respondent herein objected for delivery and hence, REA No.159 of 2013 was filed seeking for police aid for delivery of possession. The same was allowed by Execution Court by its order dated 03.10.2013. Being aggrieved by the aforesaid order, the 1st respondent herein has filed C.R.P. No.3974 and 3975 of 2013 before this Court. This Court by its order dated 17.11.2016 dismissed the same holding that the 1st respondent would come under the category of the person described under Sub-Rule (1) and (3) of the Rule 35 of Order XXI, who is bound by the decree passed by the Trial Court in the suit in O.S.No.473 of 2003. Being aggrieved by the aforesaid dismissal order dated 17.11.2016, the 1st respondent filed SLP Nos.11775 and 11776 of 2017 before the Apex Court. The same was dismissed by order dated 28.08.2017. Thus, the 1st respondent does not have any locus standi to project the aforesaid suit questioning the validity of the decree passed in O.S. No.473 of 2003 which is nothing but abuse of process of law and hence it is liable to be rejected.



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5. The learned counsel for the 1st respondent would submit that the aforesaid suit is filed to cancel the decree dated 06.08.2003 granted in O.S. No.473 of 2003 and for permanent injunction restraining to create any encumbrance on the basis of the Sale Deed dated 05.07.2004. The issues whether the suit is maintainable or barred by limitation can be decided only after considering the averments in the plaint and oral and documentary evidence. The Secretary of the Plaintiff Trust, came to know about the decree in O.S. No.473 of 2003 only on 26.04.2013 when the petitioners 1 to 3 preferred complaint before the Namakkal Police Station. The suit is filed within three years from the date of knowledge on 26.04.2013. So, the suit is barred by limitation. Hence, the petition filed for rejection of plaint is liable to be dismissed.

6. Heard the learned counsel for the petitioners and the learned counsel for the 1st respondent as well as perused the materials available on record.

7. Having considered the facts and circumstances of the case, as per



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the averments in the petition and the written statement filed by the 1st respondent herein, it is seen that the present secretary of the 1st respondent Trust was examined as P.W.1 and the case stands posted for cross examination. Further, it has been further stated that the suit is barred by law of limitation. However, in the counter filed by the 1st respondent, it has been stated that only after adducing the evidence on both sides, the issues whether the suit is barred by limitation can be decided. The Trial Court has rightly concluded that the issue whether the suit is barred by limitation is mixed question of law and the same can be decided only in the Trial after relying on the Judgment of the Apex Court in *Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others reported in 2018(4) CTC 206*. Hence, this Court is not inclined to interfere with the aforesaid order dated 04.10.2018 of the Trial Court passed in I.A. No.719 of 2018 and hence, the Civil Revision petition is liable to be dismissed. Further, as the suit filed by the 1st respondent is pending for Trial from the year 2013, the Trial Court is hereby directed to dispose of the suit, within a period of eight months from the date of receipt of copy of this order.

8. With the above directions, the Civil Revision Petition is disposed



of. Consequently, connected miscellaneous petition is closed if any. No costs.

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Index : Yes/No

Speaking Order : Yes/No

Copy To:

1. The Principal Subordinate Judge, Namakkal.
2. The Section Officer, V.R.Section
High Court, Madras.

T.V.THAMILSELVI, J.



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