



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2022

CORAM

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THE HONOURABLE MRS.JUSTICE S. ANANTHI

CRP(MD).No. 1118 of 2021 and
CMP(MD).No.6527 of 2021

A. Selvam .. petitioner/Petitioner/3rd Defendant

Vs.

1. B.Therimuthu
2. B.Dhanasekaran .. Respondents/Respondents/Plaintiffs
3. D.Santhakumari
4. M.Basheer Ahmed .. Respondents/Respondents/Defendants 1&2

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order passed in I.A.No.671/2020 in O.S.No.134/2016, dated 09.03.2021, on the file of District Munsif, Vadipatti and allow the Civil Revision Petition Revision Petition.

For Petitioner	...	Mr. G.Jeremiah
For R1 & R2	...	Mr. S. Gopinath
		for Mr.D. Senthil
R3&R4	...	Given up

ORDER

The revision petitioner / 3rd defendant filed this revision to set aside the order passed in I.A.No.671/2020 in O.S.No.134/2016, dated 09.03.2021, on the file of District Munsif, Vadipatti.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The said Interlocutory application in I.A.No.671 of 2020 was filed by the revision petitioner / 3rd defendant under Order 7 Rule 11 CPC to reject the plaint on two grounds that there is no cause of action and barred by limitation. In para 22 of the plaint the respondents 1 and 2 / plaintiffs have stated the cause of action for the suit. Whether the cause of action is shown or not to be decided only after full trial. To decide the application filed under Order 7 Rule 11 CPC only pleadings in the plaint can be looked into. As per the plaintiffs, there is a cause of action and the



second objection is barred by limitation.

4. The respondents / plaintiffs have filed a suit in the year 2016 to declare the sale deeds, dated 27.01.2009, 06.11.2012, 12.02.2013 as null and void. The revision petitioner / 3rd defendant contended that sine the suit has been filed in the year 2016 the suit is barred by limitation. The suit is filed after three years from the date of cause of action of sale deeds by the plaintiffs, but the plaintiffs are not a party to the documents. So the limitation is start from the date of knowledge and the limitation is the mixture question of fact of law.

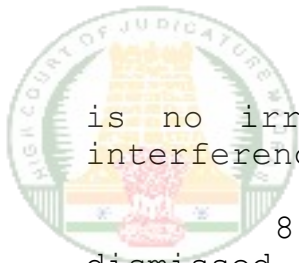
5. The revision petitioner / 3rd defendant relied on the Judgment of the Hon'ble Supreme Court made in **Civil Appeal No.9519 of 2019 arising out of SLP (Civil) No.11619 of 2017 in the case of Dahiben Vs. Aravindbhai Kalyanji Bhanusali (Gajra) (D) Thr LRs and others**, wherein it has been held as follows:

"On a reading of the plaint, it is clear that the cause of action arose on the non-payment of the bulk of the sale consideration, which event occurred in the year 2009. The plea taken by the plaintiffs is to create an illusory cause of action, so as to overcome the period of limitation. The plea raised is rejected as being meritless and devoid of any truth."

15.5. The conduct of the Plaintiffs in not taking recourse to legal action for over a period of 5 and ½ years from the execution of the sale deed in 2009, for payment of the balance sale consideration, also reflects that the plaintiffs apparently filed the suit after the property was further sold by respondent No.1 to respondent Nos.2 and 3, to case a doubt on the title of respondent No.1 to the suit property."

6. But in the case on hand the plaintiffs pleaded that they get knowledge only in the year 2016 and thereafter, filed a set aside application under Order 7 Rule 11 CPC. When the pleadings shows the limitation period then only it can be rejected on the ground of limitation.

7. In the present case, as per the pleadings in the plaint, the date of knowledge is in the year 2016 only. So the limitation is start from 2016 only. Already written statement filed and the issues were framed and the suit is pending for cross of PW.1 and for marking of additional documents, the revision petitioner / 3rd defendant contended that summon for defendants 1 and 2 not served is not at al considerable. The revision petitioner can raise the said plea before the trial Court at the time of cross examination of PW.1. In such circumstances, I am of the view that the learned Judge has exercised his power conferred on him properly and there



is no irregularity or illegality in the said order, warranting interference by this Court.

8. In the result, these Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.671 of 2020 in O.S.No.134 of 2016, dated 09.03.2021, on the file of District Munsif, Vadipatti. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp

To

The District Munsif, Vadipatti.

+1 CC to M/s.J.JOHN, Advocate (SR-10238[F] dated 07/03/2022)

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