



C.R.P.No.682 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Revision Petition No. 682 of 2020
and
C.M.P.No.3539 of 2020

C.S. Ramaswamy

.. Petitioner

Versus

1. Jayalakshmi
2. Ravi
3. Minor Dharanya
D/o.Ravi
Rep.by Guardian her father Ravi
4. Karpagam
5. Usharani
6. Jothimani
7. Sivaramakrishnan
8. Gopinath
9. Minor Saravanan
Rep.by Guardian his father
Sivaramakrishnan

.. Respondents



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Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decreetal order dated 18.10.2019 passed by the learned Principal Subordinate Judge at Coimbatore in I.A.No.644 of 2016 in O.S.No.265 of 2016 dismissing the petition seeking rejection of the plaint in O.S.No.265 of 2016 on the file of the Principal Subordinate Judge at Coimbatore.

For Petitioner : Mr. R.N. Amarnath

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed against the order and decreetal order dated 18.10.2019 passed by the learned Principal Subordinate Judge at Coimbatore dismissing the petition seeking rejection of the plaint in I.A.No.644 of 2016 in O.S.No.265 of 2016.

2. The petitioner herein is the defendant and the respondents herein are the plaintiffs in the suit.

3. The respondents herein, as plaintiffs, have instituted the suit in O.S. No. 265 of 2016 on the file of the learned Subordinate Judge,



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Coimbatore for a decree, cancelling the sale deed dated 19.09.2005 registered as document No. 3554 of 2005 on the file of Joint Sub-Registrar-II, Coimbatore executed by them in favour of the defendant/revision petitioner herein, consequently declare them as the owners of the property covered in the aforesaid sale deed and also to restrain the defendant/revision petitioner herein from alienating or encumbering the suit properties.

4. As per the plaint averments, the properties of the respondents/plaintiffs were sought to be acquired by the Government by issuing G.O. Ms. No. 799 dated 13.08.1980 with respect to 183.35 acres of land in Telungupalayam Village for the purpose of establishing Anna Nagar Neighbourhood Scheme. In this context, a notification under Section 4(1) of the Land Acquisition Act, 1984 was issued on 25.08.1982. Questioning the acquisition proceedings, the respondents/plaintiffs filed W.P. No. 4079 of 1989 and it was dismissed by this Court on 07.09.1994. Aggrieved by the same, they preferred Writ Appeal in W.A. No.258 of 1994 before the Division Bench of this Court, which came to be allowed on 01.04.1998. Subsequently, the Tamil Nadu Housing Board filed SLP (C) Nos. 13458 to



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13462 of 1998 before the Hon'ble Supreme Court of India and the same were withdrawn with liberty to approach this Court by filing a review petition. Thereafter, the Housing Board has filed the Review Petition in Rew. Appl.No.68 of 1999 seeking to review the judgement dated 01.04.1998 passed in W.A. No.258 of 1994. The said review petition was allowed on 04.10.2007 by reviewing the judgement dated 01.04.1998. The plaintiffs then filed WP No. 4079 of 2008 on the ground that while filing the Review Application, the Housing Board had suppressed many material particulars. However, the Division Bench of this Court dismissed the writ petition on 05.12.2009. Aggrieved by the same, the plaintiffs have filed SLP (C) No. 15932 and 15933 of 2010 in which an order of status quo was granted on 09.07.2012 and the Civil Appeal No. 5781 and 5782 of 2012 was pending before the Honourable Supreme Court.

5. According to the plaintiffs, at this juncture, the defendant, who is a promoter of Housing Projects in Coimbatore, approached the plaintiffs along with other land owners and lured them to sell the subject matter of the land on joint venture basis. Believing such representation to be true, the



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plaintiffs signed some documents under the belief that they are signing the Joint Venture agreement. Later, the plaintiffs were shocked to note that the defendant/revision petitioner herein, filed WP No. 14625 of 2014 and W.A. No. 167 of 2015 seeking to pay compensation to him under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. According to the plaintiffs, the defendant had committed an act of fraud and made them to execute some documents styled as joint venture agreements, but only later, they came to know that they have signed the sale deed in favour of the defendant. It is the plea of the plaintiffs that they have not sold the suit property to the defendant nor they received the sale consideration from the defendant. Further, they did not hand over the possession of the suit property to the defendant. Therefore, the plaintiffs have filed the suit for the relief stated above.

6. On notice, the defendant/revision petitioner herein filed written statement denying the plaint averments. According to the defendant the suit is an abuse of process of law and it is not maintainable. The plaintiffs have



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sold the suit property by executing a sale deed dated 19.09.2005. They have also received the entire sale consideration by means of a pay order. The suit is hopelessly barred by limitation inasmuch as it was filed 11 years after executing the sale deed dated 19.09.2005. Therefore, the defendant prayed for dismissal of the suit.

7. Notwithstanding the defence raised by way of written statement, the defendant has also filed an application under Order VII Rule 11 of the Code of Civil Procedure contending inter alia that when the plaintiffs have executed the sale deed with their eyes wide open, they are estopped from seeking to cancel the sale deed after a decade. The entire sale consideration was paid to the plaintiffs by means of pay order and they have also encashed it through the bank. The property was sold not because the lands were subjected to acquisition proceedings and is under litigation but due to the fact that the plaintiffs are in need of money for the purpose of maintenance, welfare and education of the children. Further, due to paucity of water, the plaintiffs also could not cultivate the lands in question and therefore, they have executed the sale deed in favour of the defendant to promote the lands



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into house site. Even at the time of sale, the share of the minor daughter of the third plaintiff has been duly deposited by the defendant. However, much after execution of the sale deed, the minor daughter of the third plaintiff filed O.S. No. 887 of 2011 and the minor daughter of the second plaintiff filed O.S. No. 730 of 2001 for partition in which the plaintiffs have been arrayed as defendants 6 to 9. However, the suits in O.S. No. 887 and 730 of 2011 were dismissed by the Sub Court, Coimbatore in the year 2014 by setting the plaintiffs therein exparte and also holding that the sale of property in favour of the defendant herein was valid and binding on all the family members. Thereafter, the plaintiffs have filed the instant suit in O.S. No. 262 of 2016 and therefore it is barred under Order II Rule 2 of CPC. In any event, when once the sale deed was executed in the year 2005, the present suit in O.S. No. 262 of 2016 is hopelessly barred by limitation. The sale deed was validly executed by the plaintiffs and they have received the due sale consideration paid by the defendant. Therefore, the defendant sought for rejecting the plaint as being barred by Order II Rule 2 of CPC and on the ground of delay in filing the suit.



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8. The trial court dismissed the application filed by the defendant/revision petitioner herein in I.A. No. 644 of 2016 in O.S. No. 265 of 2016 on the ground that the issues involved in the suit have to be decided only after trial in the suit. Aggrieved by the same, the present Civil Revision Petition has been filed.

9. The learned counsel for the revision petitioner/defendant submitted that the execution of the sale deed, receipt of sale consideration and other facts were admitted before the Registering Officer as contemplated under Sections 52 and 58 of the Registration Act, 1908, read with Rule 162 of the Registration Rules, but the Court below has not considered the same. It is alleged that the plaintiffs came to know about the execution of the sale deed only when they visited the property recently, however they admitted that the document was registered before the Registering Authority without any coercion or undue influence. The Registering Officer also, on being satisfied with the execution of the document and on verification from the credentials of the executant, admitted the document for registration and registered the document. When once the document is registered by the



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Registering Officer and there was no allegation against the Registering Officer, then the registration of the document is valid and it cannot be questioned. In any event, the execution of the sale deed, cannot be set aside after a period of 10 years and the limitation period to question it is only 3 years. The suit is hopelessly barred by limitation and therefore, the petitioner has filed the application for rejecting of the plaint under Order VII Rule 11 CPC. The amount towards sale consideration has been paid by way of cheques, which were encashed by the plaintiffs, but it has not been considered by the Court below. The Court below erroneously held that the said issue regarding the limitation can be considered only after trial and not at the preliminary stage and ultimately dismissed the application to reject the plaint on the above lines. Aggrieved by the same, the petitioner herein has filed this Civil Revision Petition.

10. Above all, the learned counsel for the revision petitioner/defendant submitted that similar suit has been filed against the revision petitioner/ defendant in O.S. No. 335 of 2018 for identical relief to cancel the sale deed dated 29.09.2005 executed in favour of the revision



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petitioner/defendant. In the suit, apart from filing written statement, the revision petitioner filed I.A. No. 319 of 2018 for rejecting the suit, but it was dismissed on 28.03.2019. As against the same, the revision petitioner/defendant filed CRP No. 1921 of 2019. Similar Civil Revision Petitions were also filed before this Court. By a common order dated 28.09.2020 this Court dismissed the Civil Revision Petitions. As against the same, Civil Appeals were filed before the Honourable Supreme Court. By a common Judgment dated 30.09.2022 passed by the Honourable Supreme Court in Civil Appeal No. 500 of 2022 etc., batch, the appeals preferred by the revision petitioner herein was allowed. Thus, it is submitted that identical order passed by the trial court, dismissing the application filed for rejecting the suit, was set aside and the plaint in O.S. No. 335 of 2018 filed against the revision petitioner/defendant was rejected. Therefore, it is submitted that the present Civil Revision Petition has to be allowed and the order passed by the court below has to be set aside.

11. In spite of service of notice, there is no representation for the respondents/plaintiffs. This Court had perused the material records placed

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for consideration.

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12. It is seen from the records that one Nanjammal and six others have filed a suit in O.S. No. 335 of 2018 before the Sub Court, Coimbatore against the revision petitioner herein. The said suit was filed for the same relief as sought for in the present suit in O.S. No. 265 of 2016. In other words, the relief sought for in the suit in O.S. No. 335 of 2018 is to cancel the sale deed dated 29.09.2005 registered as document No. 3561 of 2005 on the file of Joint Sub-Registrar-II, Coimbatore executed by them in favour of the defendant/ revision petitioner herein. In that suit also, apart from filing a written statement, the revision petitioner/defendant herein has filed I.A. No. 319 of 2018 in O.S. no. 335 of 2018 to reject the plaint under Order VII Rule 11 of CPC with the same set of defence. The trial court dismissed I.A. No. 319 of 2018 in O.S. No. 335 of 2018. Aggrieved by the same, the revision petitioner/ defendant herein filed CRP Nos. 1921, 1973, 1922, 1931, 1975, 1976 and 1968 of 2019. By order dated 28.02.2020, this Court dismissed the Civil Revision Petitions with a direction to the trial court to disposed of the suit expeditiously. Challenging the same, the revision



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petitioner herein has filed Civil Appeal Nos. 500, 504, 505, 506, 502, 501 and 503 of 2022 before the Honourable Supreme Court. The Honourable Supreme Court, by a common Judgment dated 30.09.2022, allowed all the appeals and thereby allowed the applications filed under Order VII Rule 11 of CPC. In Para No. 7.9 of the order dated 30.09.2022, the Honourable Supreme Court held thus:-

"7.9 Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order VII Rule 11 CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the Courts below have materially erred in not rejecting the plaints in exercise of powers under Order VII Rule 11(d) CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated



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*19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of **T.Arivandandam vs. T.V.Satyapal (1977) 4 SCC 467** and other decision of **Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by Legal Representatives, (2020) 16 SCC 601**, and as the respective suits are barred by the law of limitation, the respective plaints are required to be rejected in exercise of powers under Order VII Rule 11 CPC."*

13. Thus, it is evident that the order dated 30.09.2022, passed by the Honourable Supreme Court, in a connected suit filed against the present Civil Revision Petitioner/defendant will have a bearing on the respondents/plaintiffs herein. Further, the issue of limitation involved in the present suit



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are identical and considering those averments, the Honourable Supreme Court allowed the Civil Appeals.

14. The order passed by the Honourable Supreme Court in relation to one of the suits filed against the revision petitioner, mentioned supra, is squarely applicable to the facts of this case. In this case also, the suit in O.S. No. 265 of 2016 was filed to cancel the sale deed executed by the plaintiffs on 19.09.2005 viz., 11 years after executing it in favour of the defendant/revision petitioner herein. The plaintiffs have also admitted having received the entire sale consideration through pay order. While so, it is too big a pill to be swallowed by the plaintiffs to contend that they have executed the sale deeds under the impression that they are only signing a joint venture agreement in favour of the defendant. In any event, the present suits have been filed after 11 years. Even otherwise, in the year 2011, the children of the plaintiffs have filed two suits in O.S. No. 887 of 2011 and O.S. No. 730 of 2011 in which the plaintiffs in the present suit in O.S. No. 265 of 2016 were arrayed as defendants. Therefore, atleast in the year 2011, the plaintiffs had knowledge about the instant transaction when the suits in



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O.S. Nos. 730 and 887 of 2011 were filed by their children. The suits were subsequently dismissed by not only setting the plaintiffs therein exparte but on the ground that the sale of the suit property in favour of the defendant will bind the plaintiffs therein and his family members. Therefore, the present suit in O.S. No. 265 of 2016 is hit by the provisions of Order II Rule 2 of CPC. There is no triable issues involved in the present suit and therefore the conclusion of the trial court that the issues have to be gone into after trial is legally not sustainable. A suit of this nature has to be nipped in the bud without driving the litigants to undergo the ordeal of a lengthy and prolonged trial. Failure to do so will not only add to the irony of the litigant but also will result in wastage of the precious time of the Court in adjudicating suits having real and far-reaching issues. Therefore, this Court is of the view that this is a fit case where the continuation of the suit proceedings in O.S. No. 265 of 2016 is not in the interest of justice. If the revision petitioner is directed to defend the vexatious suit, it would only add to his agony.



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15. Accordingly, this Civil Revision Petition is allowed. The plaint filed before the Court below in O.S.No.265 of 2016 is rejected. Consequently, the connected Miscellaneous Petition is closed. No costs.

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kv

Index: Yes/No

Neutral Citation: Yes/no

Speaking order/Non-speaking order

To

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



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V.BHAVANI SUBBAROYAN,J.

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