



C.R.P. No. 728 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM:

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

C.R.P. No. 728 of 2023

and

C.M.P.No. 5629 of 2023

R.Suresh,
S/o. M. Rajavadivelu

... Petitioner

Vs.

1. P.N.Geetha,
W/o. P.N.Damodaran

2. Lalitha,
W/o. Mohanraj

.. Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, to set aside the fair and decreetal order dated 03.09.2022 made in I.A.No.519 of 2018 in O.S.No.84 of 2018 on the file of learned Addl. District Judge, Kancheepuram District at Chengalpattu by allowing this Civil Revision Petition.



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For Petitioner : Mr. S.Anburaja

For Respondents : Mr.P.Suryaprakasam

ORDER

Challenging the impugned order passed by the trial judge in I.A.No.519 of 2018 in O.S.No.84 of 2018 on the file of Addl. District Judge, Kancheepuram, the defendant preferred this Civil Revision Petition.

2. The defendant filed an application in I.A.No.519 of 2018 under Order VII Rule 11 (d) of C.P.C. to reject the plaint stating that already the plaintiffs, who are his sisters executed a release deeds dated 24.08.2005 and received a sum of Rs.30,00,000/- by way of demand draft for the value of respondents 2/3rd share in full quit for the properties left by their father. Thereafter, he became as absolute owner of the properties. But, suppressing the said fact, nearly after lapse of 14 years, they have filed this application, as such, is totally barred by limitation. In the suit, notice was sent to the defendant and he raised objections. On considering both side submissions, the trial court dismissed the application holding that if at all, the plaintiffs



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have executed the release deeds dated 24.08.2005 in favour of this defendant and if the suit is not filed within three years, the question of limitation is a mixed question of fact and law and the same is to be concluded only at the time of trial, since because, the plaintiffs denied the execution of release deeds stating that it was obtained by undue influence, however, this defendant would submit that he has paid consideration as and when selling the property as per the plaint allegation. So, the issue involved in the case that whether the suit is barred by limitation or the release deeds are valid, it is a mixed question of law and on facts and the same is to be decided only at the time of trial. Accordingly, the said application was dismissed.

3. Mr. S.Anburaja, learned counsel for Revision Petitioner submits that after receipt of Rs.30,00,000/- from him being the value of the respondents 2/3rd share in full quit for the properties left by their father in the year of 2005, now suppressing the fact, after lapse of more than 14 years, now they have filed a suit, which is barred by limitation, but the same was not appreciated by the trial court. As rightly contented by the plaintiffs that



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the release deeds were executed by undue influence, but the contention of defendant is that he paid a sum of Rs.30 lakhs to the plaintiffs at the time of execution of release deeds are all subject to proof and it is a mixed question of law and on facts. Therefore, the trial court has rightly appreciated the facts, which needs no interference. Accordingly, this Civil Revision Petition is dismissed on merits. However, liberty is granted to the defendant to raise all his defence before the trial court and the trial court is directed to complete the trial and dispose the case within a period of five months from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

03.04.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

The Addl. District Judge,
Kancheepuram Dt. At Chengalpattu.



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T.V.THAMILSELVI, J.

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