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C.R.P.No.1071 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 06.04.2023

Delivered On: 28.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No.1071 of 2021

and

C.M.P.No.8461 of 2021

M.S. Sasidharan

.. Petitioner

Versus

Vijaya

.. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 05.11.2020 passed by the District Judge (Fast Track Mahila) of Namakkal in I.A. No. 3 of 2020 in O.S. No. 252 of 2018.

For Petitioner : Mr. K.Ramanraj

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 05.11.2020 passed by the learned District Judge (Fast Track Mahila) of Namakkal in I.A. No. 3 of 2020 in O.S. No. 252 of 2018.

2. The Defendant in O.S. No. 252 of 2018 on the file of the learned

Principal District Judge, Namakkal, is the Revision Petitioner herein.



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3. The suit was filed by the Respondent/Plaintiff for a declaration to declare that she is the owner of the A Schedule property; to declare that the settlement deed dated 14.01.2016 executed by Late. Arumugam in favour of the Defendant in respect of the A Schedule property is legally not enforceable and for a consequential permanent injunction restraining the Defendant, his men, servants, agents or any one from in any manner interfering with the peaceful possession and enjoyment of the A Schedule property by the Plaintiff.

4. It is pertinent to mention that the suit was filed as against the Defendant, who was a minor by then, by indicating her mother Mrs. Shanthi, as a natural guardian to represent the minor. The suit was proceeded on the basis that the settlement deed executed by the Late. Arumugam, an auction purchaser, in favour of the minor Defendant is legally unenforceable.

5. The suit was contested by the mother and natural guardian of the Defendant namely Shanthi by filing a written statement and prayed for dismissal of the suit.

6. Notwithstanding the written statement filed by the mother and natural guardian of the Defendant, after attaining majority, the Defendant has filed the



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instant application in I.A. No. 3 of 2020 praying to reject the plaint. In the affidavit filed in support of the application under Order VII Rule 11 of CPC, it was contended that the suit was filed without any petition to recognise the guardian as contemplated under Order 32 Rule 4 of the Code of Civil Procedure and therefore, the very framing of the suit itself is bad. It is further stated that the father of the minor Defendant alone is looking after him and he was alive. While so, framing the suit by indicating the mother of the Defendant as his natural guardian is also bad. It is further contended that earlier, a suit in O.S. No. 595 of 2005 was filed by one A. Mohanraj, against the respondent-Plaintiff herein namely Vijaya for recovery of a sum of Rs.84,840/- and the said suit was decreed on 05.12.2005. In order to execute the decree, I.A. No. 1587 of 2005 was filed for attachment of the suit property before judgment. Subsequently, an auction sale was conducted in which Mr. Arumugam, grand father of the Defendant herein has purchased the suit property and subsequently executed the settlement deed dated 14.01.2016 was executed in favour of the Defendant, which is sought to be set aside as null and void in the present suit. It is further contended that the respondent-Plaintiff has also signed the delivery receipt when the property was delivered in favour of Mr.Arumugam, auction purchaser. It is also contended that the order dated 29.02.2012 was passed by this Court in CRP (NPD) No. 4511 of 2011 filed by



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the respondent herein and after dismissal of the revision petition, the present suit ought to have been filed within three years and therefore, the suit itself is filed beyond the period of limitation. In any event, the framing of the present suit itself is not proper and prayed for rejecting the plaint.

7. The trial Court dismissed the application filed under Order VII, Rule 11 of CPC on the ground that the suit is filed in time inasmuch as it was filed soon after the execution of the settlement deed dated 14.01.2016 by the auction purchaser Mr. Arumugam in favour of the Defendant herein. The trial court also rejected the plea that the suit was not properly framed. By referring to the provision under Order 32 Rule 3 of CPC and the fact that the suit was filed by mentioning the name of the mother of the Defendant Shanthi as guardian, the trial court did not entertain the plea of the Defendant to reject the plaint on those grounds.

8. The learned Counsel for the Revision Petitioner contended that the father of the Revision Petitioner herein Mohanraj had filed an I.A. No. 535 of 2010 in O.S. No. 595 of 2005, seeking to amend the survey number of the property that was purchased by the Revision Petitioner's grandfather in the public auction. The Respondent in I.A.No.535 of 2010 in O.S.No.595 of 2005



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is the Respondent herein. After due enquiry, the learned Principal District Munsif, Namakkal, allowed I.A. No. 535 of 2010 in O.S. No. 595 of 2005 as per order dated 08.09.2011. Aggrieved by the same, the Respondent herein approached this Court by way of C.R.P. No. 4511 of 2011 and it was allowed by this Court on 29.02.2012. In the above said Civil Revision Petition, it was clearly observed as follows:

“If really, the Judgment Debtor has no saleable interest in the property sold, it is open for the auction purchaser to approach the Court by invoking Order 21 Rule 91 of CPC and the Court can set aside accepting the case of the Auction Purchaser. The Court can set aside the sale and it is not open to the Decree Holder to seek aid of the Court to amend the schedule given in the application for attachment before the judgment.”

9. Pursuant to this order, the present suit has been filed by the respondent herein namely O.S. No. 252 of 2018.

10. The learned Counsel for the Revision Petitioner invited the attention of this Court to the plaint averments, wherein he had narrated the entire proceedings taken place in the public auction as also the filing of the Civil Revision Petition in C.R.P. No. 4511 of 2011. He further contended that the delivery of the property had already been taken and it was identified by boundaries. Therefore, it does not affect the auction purchaser in any manner.



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In spite of the same, the Petitioner in C.R.P.No.4511 of 2011 had filed the present suit in O.S.No.252 of 2018 seeking to set aside the sale by public auction. Therefore, the Defendant in the suit in O.S.No.252 of 2018 filed the present Petition in I.A. No. 3 of 2020 in O.S. No. 252 of 2018 under Order VII Rule 11(d) seeking to reject the plaint. But the learned District and Sessions Judge, Fast Track Mahila Court, Namakkal, dismissed the Petition without taking note of the delay in instituting the present suit.

11. In support of his contentions, the learned Counsel for the Revision Petitioner has placed reliance on the following rulings:-

11.1. **2015-4-L.W.585** in the case of **Dr.L.Ramachandran and another Vs K.Ramesh and others** wherein this Court has held as under:

“Challenge to sale deed by minor, when can be filed – Suit filed after 26 years to declare the sale in favour of defendants 7 and 8 as null and void, when limitation is 3 years – Suit barred by limitation.”

11.2. **2015-3-L.W. 875** in the case of **Mrs.Vasumathi H. Shah -vs- Mrs.Pushpa Raju** wherein this Court has observed as follows:

“C.P.C., Order 7, Rule 11, specific performance, limitation, Limitation Act, Article 54, limitation, specific performance, date fixed, calculating of.

Specific date fixed under sale agreement for performance – Refusal by defendant to produce original documents – Suit filed within 3 years therefrom – held: plaintiff ought to have filed the suit within



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three years' period from the date of expiry of the date fixed for performance of the contract, under Article 54 – Documents filed along with plaint – To be looked into – Effect of – sale agreement has to be treated as part and parcel of the plaint – Suit barred by limitation, plaint to be rejected.”

12. In spite of notice to the Respondent/Plaintiff having been served through the learned Counsel appearing for the Plaintiff before the trial Court, service of notice is held to be sufficient by this Court. Hence, the name of the Respondent was printed in the cause list. Still the Respondent/Plaintiff had not engaged a Counsel to proceed with the Civil Revision Petition.

13. On perusal of the plaint in O.S. No. 252 of 2018, the relief sought for by the Plaintiff is found to be misconceived. The Plaintiff was fully aware of the fact that the suit property was brought in public auction after she suffered a decree in O.S. No. 595 of 2005 filed by one A. Mohanraj. The suit property was purchased in public auction and delivery was effected through execution proceedings in continuation of sale by public auction in favour of one Arumugam. The Plaintiff has also acknowledged the delivery of the property in favour of the auction purchaser by signing the delivery receipt. While so, the Plaintiff ought to have instituted the present suit within three years from that date. On the other hand, the Plaintiff has merely waited for some time and filed the present suit for a declaration to declare that she is the owner of the property. If the present suit is allowed, it would nullify and



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indirectly set at naught the decree passed in the earlier suit in O.S. No. 595 of 2005 against the Plaintiff herein. The present suit is misconceived and it is not maintainable. The decree passed in O.S. No. 595 of 2005 has become final in which delivery was also effected in favour of the auction purchaser. While so, the Plaintiff, for no reason, can seek to set aside the decree passed in the earlier suit in O.S. No. 595 of 2005 by filing the present suit. For whatever reason, the present suit has not been filed within three years from the date of delivery of the property in favour of the auction purchaser on 24.10.2007. Even after sale, the decreeholder sought for amendment of the survey number and it was the subject matter of CRP (NPD) No. 4511 of 2011 and it was allowed on 29.02.2012. Even within three years therefrom, the present suit has not been instituted. In the above circumstances, the rulings relied by the learned Counsel for the Revision Petitioner in **2015-4-L.W.585** in the case of ***Dr.L.Ramachandran and another Vs K.Ramesh and others*** and **2015-3-L.W. 875** in the case of ***Mrs.Vasumathi H. Shah -vs- Mrs.Pushpa Raju*** is found to be acceptable. Therefore, this Court is of the view that the present suit, as filed, is barred.

14. In the result, the **Civil Revision Petition is allowed**. The order dated 05.11.2020 passed by the learned District Judge (Fast Track Mahila) of Namakkal in I.A. No. 3 of 2020 in O.S. No. 252 of 2018 is set aside. No costs.



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Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
nr/srm

To

1. The learned District Judge (Fast Track Mahila),
Namakkal.
2. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

nr/srm

Order made in
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28.04.2023