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C.R.P.No.3653 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.03.2023

Pronounced on : 06.04.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.3653 of 2016
and CMP.No.18581 of 2016

1.K.Manavalan
2.Parameswari

.. Petitioners / Petitioners /
Defendants 1 & 2

Vs

M.Vedambal (since deceased)
1.G.Mathurai @ Maththurai (died)

2.The Branch Manager
Syndicate Bank
Nandanam Branch
No.331, Annasalai, TNHB Buildings
Nandanam, Chennai -6 00 035.

... Respondents 1 & 2 / Respondents /
2nd Plaintiff, 3rd Defendant

3.M.Amudha
4.M.Kamakchi
5.M.Sampath Kumar

... Respondents 3 to 5

[Respondents 3 to 5 are brought on record as LR's of the
deceased R1 viz., Mathurai alias Maththurai vide order
of the Court dated 28.02.2023 in CMP.No.2287 of 2023
in CRP.No.3653 of 2016

R2 - Dismissed as not pressed]



C.R.P.No.3653 of 2016

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Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the judgment and decree dated 17.10.2016 of the learned II Additional Judge, City Civil Court, Chennai, in I.A.No.14335/2011 in O.S.No.4156/2011 under Order VII Rule 11 CPC.,

For Petitioners : Mr.Ravikumar Paul, Senior Counsel
for Mr.B.Murugavel

For Respondents : Mr.R.Thiagarajan
for Dr.R.Sampath Kumar for R3 & R5
R1 - Died
R2 - Dismissed as not pressed

ORDER

The present civil revision petition is preferred by the defendants 1 and 2 in O.S. No.4156 of 2011 now pending on the file of the II Additional Judge, City Civil Court, Chennai, challenging an order dismissing their application in I.A. No.14335 of 2011 which they had taken out for rejection of the plaint under Order VII Rule 11(d) CPC.

2.1 The suit is laid with the following prayers :

- (a) To declare that the Power of Attorney dated 15.02.1979 executed by the plaintiff's husband in favour of one Venkatachala Paththar as null



C.R.P.No.3653 of 2016

and void;

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- (b) To declare that the sale deed dated 06.08.1979 executed by the said Venkatachala Paththar in favour of defendants 1 and 2 as null and void;
- (c) The equitable mortgage created by these defendants in favour of the third defendant is null and void;
- (d) Also to declare that the property in the custody of the defendants are illegal; and
- (e) for delivery of the suit property.

2.2 The material facts on which the plaintiff has rested his cause of action are :

- The suit property originally is a vacant site bearing Plot No.233 at CIT Nagar, Chennai, was purchased by a certain Muthusamy, the husband of the first plaintiff, sometime in 1956, in which he had put up a two storeyed building.
- While so, on 07.02.1973, he mortgaged the property with a certain Lakshmichand for Rs.16,000/- The mortgage debt is liable to be repaid with interest at 18% per annum, and is required to be paid in



C.R.P.No.3653 of 2016

WEB COPY

equal monthly instalments of Rs.1,600/-. For a while, the money was paid regularly by Muthusamy, but thereafter owing to his illness, it could not be paid as agreed. When Lakshnichand pressed for his money, dispute arose between Muthusamy and Lakshnichand.

- It is in this circumstances, the first defendant, a common friend of Muthusamy and Lakshnichand appeared in the scene to mediate between the first plaintiff's husband Muthusamy and Lakshnichand.
- It was then agreed that Lakshnichand, the mortgagee is required to receive the rents from the tenants of Muthusamy, through the first defendant, and to adjust the same against the mortgage money. And as required by the first defendant, sometime in 1978, Muthusamy let his property under the control of the first defendant and moved to an another place, so as to enable him to generate funds for repaying the debts.
- In the meantime, Muthusamy suffered a paralytic stroke and passed away in 1983. After the demise of her husband, the first plaintiff approached the defendant to know about the status of the mortgage dues, and that she was told that the property yields a meagre rental of Rs.150/- per month, and that is being paid to the mortgagee. And that



C.R.P.No.3653 of 2016

the entire loan would be completed in January 2005.

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- It is in this backdrop, the first plaintiff approached the first defendant to hand over suit property to her in October 2005. At her shock, she was told that the suit property was in the name of the second defendant, who is the wife of the first defendant. It then came to light that the property was purchased by the first defendant from a certain Venkatachala Paththar, who had executed the sale deed as the Power of Attorney of plaintiff's husband Muthusamy. This Power of Attorney document dated 15.02.1979 is a product of both fabrication and impersonation.
- It is in this backdrop, the plaintiffs have laid the suit for the reliefs already indicated above.

3. This Court was informed, that pending suit, the first plaintiff has impleaded the second plaintiff as his legal representative, as she and Muthusamy has no issues out of their wedlock. The second plaintiff was granted power to act on behalf of the first plaintiff vide General Power of Attorney document dated 15.12.2005, as concerning the suit property, and that he claims to be the legatee under the said document said to have been



C.R.P.No.3653 of 2016

executed by the first plaintiff.

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4. The defendants 1 and 2 have taken out their application in I.A. No.14335 of 2011 on the allegation that in paragraph 6 of the plaint, the plaintiffs have alleged that they came to know that the vendors of the defendants had forged the Power of Attorney dated 15.02.1979, and also about the sale deed executed on the strength of the Power of Attorney in favour of the defendants some time in October, 2005, and this fact was also disclosed in a private complaint preferred by the plaintiffs before the IX Metropolitan Magistrate Court complaining about the alleged forgery etc. However, the plaintiffs have chosen to file a suit before this court under Order XXXIII as an indigent person only on 22.12.2009. If the date of their knowledge about the alleged forgery of power of attorney or fabrication of documents etc. were to be reckoned, then they ought to have laid the suit latest by October 2008, but it was laid more than an year later. Hence the suit is barred by limitation.

5. This application was contested by the plaintiffs and came to be dismissed by the trial court vide its order dated 17.10.2016. Its line of reasoning is



C.R.P.No.3653 of 2016

that the plaint discloses triable issue and hence opted not to reject it. The said order is under challenge in this revision petition.

6. Heard both sides. The learned counsel for the revision petitioners stuck to his points that he has raised in his application and relied on the ratio in ***C.S.Ramaswamy Vs V.K.Senthil & Others*** [2022 SCC OnLine SC 1330]; ***Padhiyar Prahladji Chenaji (Deceased) through L.R.s Vs Maniben Jagmalbhai (Deceased) through L.R.s & Others*** [2022 SCC OnLine SC 258]; and ***Rajpal Singh Vs Saroj (Deceased) Through LR's and another*** [2022 SCC OnLine SC 638], whereas the counsel for the respondents would speak in justification, the reason for the order and he placed reliance on the ratio in ***Popat and Kotecha Property Vs State Bank of India Staff Association*** [(2005) 7 SCC 510]; ***C.Natarajan Vs Ashim Bai and Others*** [(2006) 5 SC 658]; ***Balasaria Constructions Pvt. Ltd Vs Hanuman Seva Trust and Ors.*** [(2007) 14 SCC 183 : MANU/SC/2851/2005], and the order of this Court in A.No.3972 of 2021 in C.S.No.1230/1995 dated 16.12.2021.

7. Upon carefully evaluating the merit of rival submissions and the ratio of the various authorities placed before the Court, this Court considers that it is



C.R.P.No.3653 of 2016

a fit case where the parties have to litigate the dispute out in trial.

Ordinarily, limitation is considered as a mixed question of law and fact, and hence it is essential that the issue is raised suitably during trial. After all, it does not forfeit any of the rights of the defendants in a suit, except that it postponed a decision on limitation still after trial, whereas, in invoking Order VII Rule 11(d) will have the effect of nipping the suit at its bud. The Court may not rush to non-suit the plaintiff under Order 7 Rule 11, and trial be opened, and let the true facts to the extent evidence can support them unfolded. After all, the plaintiffs have alleged fraud and vitiates all that are done fraudulently. So far as the authorities placed by the counsel for the revision petitioner is concerned, the one in ***C.S.Ramaswamy Vs V.K.Senthil & Others*** [2022 SCC OnLine SC 1330] alone deals with the effect Order VII Rule 11(d), but the facts in that case are vastly different from the one before the Court. So far as the authorities relied on by the counsel for the respondents are concerned, they essentially state the law on that aspect.

8. In conclusion, this Court considers that the order of the trial Court is in order, and it does not incline to interfere now. Hence, the CRP is dismissed.



C.R.P.No.3653 of 2016

Since the trial has already commenced, the trial Court is required to expedite the same and dispose of the matter within four months from today, excluding the intervening summer holidays 2023. No costs. Consequently, connected miscellaneous petition is closed.

.04.2023

Index : Yes / No

Speaking order / Non-speaking orders

To:

1.The II Additional Judge
City Civil Court
Chennai.

2.The Section Officer
VR Section, High Court, Madras.



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C.R.P.No.3653 of 2016

N.SESHASAYEE.J.,

ds

Pre-delivery order in
C.R.P.No.3653 of 2016

06.04.2023