



WEB COPY

A.S.No.310 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.310 of 2022
and
C.M.P.Nos.11316 & 11318 of 2022

S.Kumar

... Petitioner

Vs.

V.Ravikumar

... Respondent

Prayer: Appeal Suit is filed under Section 96 Order XLI Rule 1 of Civil Procedure Code, to set aside the Fair and Decretal order as made in I.A.No.4 of 2020 in O.S.No.610 of 2019 dated 05.03.2022 on the file of the V Additional District Court, Coimbatore.

For Petitioner : Mr.S.Venkatesh

For Respondent : Mr.S.Gopi Nathan

J U D G M E N T

The Appeal Suit has been instituted under Section 96 of the Code of Civil Procedure against the Fair and Decretal order passed in I.A.No.4 of 2020 in O.S.No.610 of 2019 dated 05.03.2022.



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2. The appellate is the plaintiff, who instituted a Suit for Declaration and Permanent Injunction. During the pendency of the Suit, the respondent / defendant filed an Interlocutory Application in I.A.No.4 of 2020 to reject the plaint under Order VII Rule 11 of the Civil Procedure Code. The Trial Court adjudicated the issues raised between the parties and allowed the Interlocutory Application by rejecting the plaint.

3. The learned counsel appearing on behalf of the appellant mainly contended that the plaint averments are categorical and in the cause of action column, the plaintiff has narrated that the Power of Attorney was cancelled by the revision petitioner / plaintiff on 22.09.2015 by way of a registered document. The said document was not taken into consideration by the Trial Court. The Trial Court considered the Power of Attorney documents and other sale deeds executed by the defendant in the Suit and rejected the plaint.

4. The learned counsel for the respondent objected the said contention by stating that the Trial Court considered the fact that the Power of Attorney



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was executed in the year 2004 and pursuant to the Power of Attorney, the respondent executed sale deeds and those sale deeds cannot be now sought to be declared as null and void and taking note of the dates on which such documents were registered, the Trial Court rejected the plaint, since the Suit was not instituted within the time prescribed under the Limitation Act.

5. Perusal of the plaint in O.S.No.610 of 2019 would reveal that the plaintiff has narrated the dates and events from 11.03.1993 onwards. The last document, which is the cancellation of Power of Attorney was registered on 22.09.2015 and thereafter, a police complaint was registered on 23.12.2016.

6. Considering the fact that the cancellation of the Power of Attorney Deed was registered on 22.09.2015, the Suit was instituted within a period of three (3) years. While considering the application under Order VII Rule 11, the Court is expected to consider the plaint as a whole, including the cause of action paragraph. Courts are not expected to adjudicate the issues on merits in an Interlocutory Application filed for rejection of plaint under Order VII Rule 11.



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7. In the present case, the Trial Court has gone into the merits and made an observation with reference to the validity of certain documents, which is uncalled for and cannot be determined in an application filed for rejection of plaint.

8. All such issues are to be adjudicated by way of full fledged trial and therefore, the findings on merits in this regard made by the Trial Court is perverse and not in consonance with the principles established.

9. In the present case, the document registered by the revision petitioner on 22.09.2015 is to be taken into consideration for the purpose of reckoning the period of limitation and the Suit was instituted within a period of three (3) years from 22.09.2015 and thus, there is no impediment for proceeding with the trial on merits and in accordance with law. The respondents are at liberty to defend the Suit instituted by the revision petitioner / plaintiff on merits.



A.S.No.310 of 2

10. Accordingly, the Fair and Decretal order passed in I.A.No.4 of 2020 in O.S.No.610 of 2019 dated 05.03.2022 is set aside and the A.S.No.310 of 2022 stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.02.2023

skr

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Judge,
V Additional District Court,
Coimbatore.



WEB COPY

A.S.No.310 of 2



S.M.SUBRAMANIAM, J.

skr

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