



CRP (PD) No.1312 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.04.2023

Pronounced on : 28.06.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

CRP (PD) No.1312 of 2023 and
CMP No.8824 of 2023

1. R.K.Balasubramaniyan
2. K.B.Revathi

... Petitioners

Vs.

Selvaraj (Died)
1. Darshini
2. Aarthi
3. Anand

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, seeking to set aside the final order passed by the Additional District Court, Tiruvannamalai, dated 25.01.2023, made in I.A.No.2 of 2022 in O.S.No.17 of 2021.

For Petitioner : Mr.B.Jawahar

For Respondents : Mr.S.R.Raghunathan for
Mr.K.Mahendran



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ORDER

The unsuccessful defendants who have filed an application in I.A.No.2 of 2022 in O.S.No.17 of 2021 on the file of the Additional District Court, Tiruvannamalai, have filed this revision challenging the order passed, dismissing the application to reject the plaint.

2. Originally, the 1st respondent who is the father of the other respondents has filed a suit in O.S.No.17 of 2021 seeking a relief of declaration of title and other consequential injunctions. Subsequent to the filing of the suit, the first respondent has passed away and thereby his legal heirs were impleaded as plaintiffs. According to the plaintiffs, the deceased 1st plaintiff has borrowed a sum of Rs.50 lakhs from the petitioners / defendants 1 and 2 in the year 2009 and executed five sale deeds dated 16.04.2009, 05.08.2009, 08.08.2009, 12.11.2010 and 27.07.2015 in respect of the schedule of properties as security and the said sale deeds were executed with an understanding that the petitioners / defendants would re-convey the properties therein after repayment of Rs.50 lakhs by the respondents/plaintiffs and thereby the sale deeds executed on the dates mentioned above are sham and nominal. It is also the case of the



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respondents/plaintiffs that though the documents in respect of schedule of properties are still remain with the petitioners/defendants and they have leased out a part of the schedule of the property to BSNL, Banumathi W/o. Sekar, Senthilkumar S/o. Rajagopal, Suresh S/o. Raman and another shop Thirumalai Milk concern. It is also their case that the respondents/plaintiffs have approached the petitioners/defendants on 15.08.2020 and offered to pay the loan borrowed and asked them for re-conveying the property. However, the petitioner / defendants said to have refused the same and thereby the respondents/plaintiffs filed a suit for declaration of title and consequently the petitioners/defendants have made appearance and filed written statement and subsequently they moved an application in I.A.No.2 of 2022 seeking to reject the plaint on the ground that the respondents/plaintiffs have no cause of action and that the suit claim is barred by limitation.

3. The respondents/plaintiffs have filed counter and after hearing both sides, the trial Court has dismissed the application. Aggrieved by the same, the present revision is filed on the ground that the trial Court has



failed to see that the respondents / plaintiffs have no cause of action and that the suit claim is barred by limitation as the respondents / plaintiffs ought to have filed a suit within three years from the date of execution of the sale deed.

4. Heard the learned counsel appearing on either side and perused the materials available on record, including the orders passed by the trial Court.

5. The petitioners/defendants are seeking to reject the plaint on two grounds viz., the plaintiffs have no cause of action and that the suit claim is barred by limitation under Order VII Rule 11 (a) and 11 (d) of C.P.C. Paragraph 6 of the plaint speaks about the cause of action alleged to have been arose to the plaintiff in filing the suit. According to the plaintiffs, the plaintiffs have approached the defendants and requested them to re-convey the property by offering to discharge the debt on 15.08.2020. It is also mentioned in the cause of action is that on 24.08.2020, the plaintiffs have also made a complaint to the Police and further made a paper



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publication on 09.01.2021. Both the grounds the petitioners/defendants have raised before the trial Court are interconnect.

6. It has been vehemently submitted by the learned counsel for the petitioners/defendants that the cause of action arose to the respondents/plaintiffs on execution of the sale deeds on various dates. The last one of which was filed on 27.07.2015 and thereby the plaintiffs should have filed the suit within three years from 27.07.2015. It is also submitted that the dates of cause of action mentioned in the plaint are only invented to file the suit.

7. On careful perusal of the the relief sought for by the respondents / plaintiffs in the suit, it is clear that the plaintiffs are seeking for declaration that they are the owners of the schedule of properties and also sought for consequential injunctions not to alienate the suit property and not to interfere with the schedule of property by the defendants and finally sought for a direction to the petitioners / defendants to re-convey the property. Therefore, the respondents / plaintiffs neither seeking for



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cancellation of the five registered sale deeds executed by the deceased plaintiff nor seeking for declaration of five sale deeds as null and void. It is the case of the plaintiffs that the documents executed by their father is only sham and nominal as they are created as a guarantee for the loan amount of Rs.50 lakhs borrowed by him from the defendants with an understanding to re-convey the suit properties as and when the money borrowed by the deceased plaintiff is paid back to the defendants. Therefore, if this version of the plaintiffs is accepted, the cause of action arose from the plaintiffs not on the dates of the execution of the sale deeds, but on the date when the defendants refused to re-convey the property by accepting the money borrowed by their father.

8. As already observed above, the plaintiffs have not been seeking for a declaration that the documents are either null and void or sham and nominal. If the main prayer of the plaintiff is for declaration, the submissions of the learned counsel for the petitioners / defendants can be accepted to some extent. Since the plaintiff is seeking for a declaration of title which is independent of seeking cancellation of documents and seeks



re-conveying the property in favour of the plaintiffs is only consequential to the declaration of the title. The cause of action will have to be considered as to whether the plaintiffs relief of declaration is having cause of action and limitation and not that the plaintiffs' father has executed the document in 2015. According to the plaintiffs, since the defendants have refused to execute the reconveyance deed, the plaintiffs have filed a suit for declaration of title and other ancillary prayers. In case if the defendants have re conveyed the property as per the alleged arrangement, there would not have been any occasion for the plaintiffs to file the suit. Therefore, it is clear that if the plaintiffs version alone is accepted, the plaintiffs relief of declaration has got cause of action. Further, even if the contention of the petitioners/defendants is accepted, the argument of the petitioners /defendants confines only in respect of reconveyance of the property in favour of the plaintiffs. It is not only the relief that the plaintiffs are seeking as referred above, the plaintiffs are seeking multiple reliefs including the declaration of title, grant of perpetual injunction and seeking direction to the defendants not to alienate the property, perpetual injunction, directing the defendants not to interfere with the possession of the plaintiffs over



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schedule of properties. The petitioners/plaintiffs will not dispute the same.

Admittedly the plaintiffs have cause of action in respect of the reliefs of perpetual injunction against the defendants. Therefore, even if the petitioners/defendants arguments are accepted, still the plaintiffs can sustain his plaint in respect of some of the reliefs. It is the settled legal position that under Order VII Rule 11, a part of the suit cannot be rejected.

9. As already discussed above, the petitioners/defendants are agitating in respect of the suit claim on the ground of limitation and not having cause of action. As the documents through which the deceased plaintiff has conveyed the property pertains to the year 2015. Therefore, in view of the discussions above, the trial Court has rightly concluded that there are no merits in the petition seeking to reject the plaint and therefore, the revision is hereby dismissed. No costs. Consequently, connected miscellaneous petition is closed.

.06.2023

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Index: Yes/No

Speaking order / Non speaking order



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DR.D.NAGARJUN, J.

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