



C.R.P. Nos.1504, 1519 & 1738 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.1504, 1519 & 1738 of 2019
and
C.M.P.Nos. 9834, 9921 & 11118 of 2019

C.R.P.No.1504 of 2019

Mr. S.Abdul Kapoor

... Petitioner

Versus

1. Mr.B.Prabakaran,

2. Mr.U.Pulliah

... Respondents

PRAYER in C.R.P.No.1504 of 2019 : Civil Revision Petition has been filed under Art. 227 of Constitution of India, praying to set aside the strike off the plaint filed in O.S.No. 289 of 2018 on the file of learned Principal District Judge at Chenglepet.



C.R.P. Nos.1504, 1519 & 1738 of 2019

WEB C C.R.P.No.1519 of 2019

1. Mrs.P.Kenamma
2. Mrs.S.Bhuvaneswari
3. Mr.G.Kannan

... Petitioners

Versus

Mr.B.Prabakaran

... Respondent

PRAYER in C.R.P.No.1519 of 2019 :

Civil Revision Petition has

been filed under Art. 227 of Constitution of India, praying to set aside the strike off the plaint filed in O.S.No. 291 of 2018 on the file of learned Principal District Judge at Chenglepet.

C.R.P.No.1738 of 2019

Mr.U.Pulliah

... Petitioner

Versus

1. Mr.B.Prabakaran
2. Mr.S.Abdul Kapoor

... Respondents

PRAYER in C.R.P.No.1738 of 2019 :

Civil Revision Petition has been

filed under Art. 227 of Constitution of India, praying to set aside the strike off the plaint filed in O.S.No. 289 of 2018 on the file of learned Principal District Judge at Chenglepet.



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C.R.P. Nos.1504, 1519 & 1738 of 2019

For Petitioner in
C.R.P.No.1504 of 2019 : Mr.P.G.Thiyagu

For 1st Respondent in
C.R.P.Nos.1504 and
1738 of 2019 : Mr.K.Govi Ganesan

For Petitioners in
C.R.P.Nos.1519 &
1738 of 2019 : Mr.V.Raghavachari for
Mr.D.Lourthu Paul Belson

For Respondent in
C.R.P.No.1519 of 2019 : Mr.K.Govi Ganesan

COMMON ORDER

The Revision Petitioner herein in C.R.P.No. 1504 of 2019 is the 2nd defendant and the Revision Petitioner herein in C.R.P.No.1738 of 2019 is the 1st defendant in the suit in O.S.No. 289 of 2019 on the file of Principal District Judge, Chengalpattu respectively. The Revision Petitioners herein in C.R.P. No.1519 of 2019 are the defendants 1 to 3 in the suit in O.S.No.291 of 2018 on the file of Principal District Judge, Chengalpattu. By invoking Art. 227 of Constitution of India, the Revision Petitioners have filed these Civil Revision Petitions praying this court to strike off the plaint



C.R.P. Nos.1504, 1519 & 1738 of 2019

filed in O.S.Nos. 289 and 291 of 2018 on the file of Principal District Judge, Chengalpattu on the ground of abuse of process of law.

2. The 1st respondent/plaintiff in both the suits contested the case. In fact, both suits in O.S.Nos. 289 and 291 of 2018 were filed by the 1st respondent herein as a plaintiff against the Revision Petitioners viz., Pulliah, his wife, and a third party purchaser Abdul Kapoor for the relief of specific performance and also praying to declare the sale deed stand in the name of purchaser viz., Abdul Kapoor dated 11.12.2017 as null and void. Immediately after the receipt of notice, the defendants in both the suits filed the above Civil Revision Petitions praying to strike off the plaint stating that the alleged relief claimed by the plaintiff as such is barred by limitation, since because as per the alleged sale agreement, the time is the essence of the contract and the time to perform the contract was fixed within one year, thereby the plaintiff, as a purchaser, he is not ready and willing to perform the contract by tendering balance amount within a stipulated period. Even after that, within three years, he has not approached the court of law or the vendors within a period of three years of the suit period, thereby his claim is



barred by limitation as per Art.54 of the Act. Nearly after 23 years of the alleged date of sale agreement, he preferred the suits, as such is a clear abuse of process of law. Hence, they prayed to strike off both the complaints by invoking Art.227 of Constitution of India.

3. To support his contentions, the learned counsel for Revision Petitioner relied on the authority reported in **2021 (1) L.W. 267** in the case of **P.Baskar and others vs. P.Annadurai**, wherein the Apex Court held in para 29 as follows :-

“29. *In fine,*

(1) The suit complaint in O.S.No.110 of 2020 is nothing but an outcome of clever drafting by a man of legal knowledge in manufacturing suit on time barred dead wood rights and mere astuteness in drafting the complaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for.

(2) The complaint prayer are reproduced, at it is, for proper appreciation of clever camouflaging as to how prayers are cleverly drafted to overcome partition suit for specific performance and to claim time barred claims and to create illusory cause of action by imagining words of pleadings.



- (3) *In essence, the respondent/plaintiff seeking to declare his entitlement to title to the suit to an oral agreement for oral partition after four years registered partition, on the basis of an unfilled and undisclosed agreement. In law, an agreement will not confer or create title over the property as per Sec.54 of Transfer of Property Act. By device of clever drafting of the plaint, the respondent/plaintiff is attempting to file a fictitious suit on the basis of an illusory cause of action and suit of the present nature is nothing but camouflage to get over the bar of limitation and the present suit for reopening the partition after final partition viz., time barred relief, as per Limitation Act.*
- (4) *The suit, as such framed and filed ought not to have taken on file and number it as the same is nothing but 'pure' abuse of process of court (as held in **Dahiben case** reported in (2020) 7 SCC 366 and **Raghwendra Sharan Singh case** reported in (2020) 16 SCC 601.*
- (5) *Normally, this court will exercise “Judicial restrain” to exercise the powers conferred under Art.227 of the Constitution of India, to reject the plaint pending before the lower courts. However, on facts and circumstances of the case, continuation of trial of suit shocks the “judicial consciences” of this court, as in the present*



one, I am of the view that, it amounts to “abuse of process of court” and the same is to be “nipped in the bud”, as held by Hon'ble Supreme Court, (2017) 13 SCC 174 (Madanuri Sri Ramchandra Murthy vs. Syed Jalal)”

They have also relied on the following authorities in support of their contentions :-

- a) The decision rendered by Apex Court in ***Civil Appeal No. 2678 of 1985*** in the case of ***Jawahar Lal Wadhwa and Ors. vs. Haripada Charoberty.***
- b) The decision rendered by Apex Court in ***Civil Appeal No. 4190 of 2000*** in the case of ***Ahmmadsahab Abdul Milla (dead) by proposed Lrs. vs. Bibijan and Ors.***
- c) The decision rendered by this court in ***C.R.P. (NPD) No.1929 of 2010 and M.P.No.1 of 2010*** in the case of ***A.P. Abdul Rasheed and Ors. vs. Hotel K.K.Residency.***
- d) The decision rendered by this Court in ***S.A. Nos.1125 of 2008, 1009 of 2009*** in the case of ***Ganga Harinarayanan and Ors. vs. K.Pattammal and Ors.***
- e) The decision rendered by this Court in reported in ***2011 SCC Online Mad. 1284 : (2011) 3 MWN (Civil) 478 : (2011) 8 Mad LJ 696*** in the case of ***Arumugam @ Tamilarasan vs. Gothamchand Jain.***



f) The decision rendered by this Court in ***S.A. No.1303 of 2013*** in the case of ***Radha Lakshmanan vs. M.S.Gurusamy.***

4. By way of reply, the learned counsel for 1st respondent/plaintiff would submit that as per the sale agreement, the Revision Petitioners Pulliah and his wife, who are the owners of the suit property in O.S.No.289 of 2018 and his wife is adjacent owner of the suit property in O.S.No.291 of 2018. Independently, they have accepted to sell the property and they have entered two separate sale agreements for a total sale consideration of Rs.3,50,000/- and received an advance of Rs.50,000/- and the time was fixed as one year. Thereafter, sons and daughters of vendors executed an affidavit stating no objection to sell the property to the plaintiff and all the original title deeds and possession of suit properties were handed over to the plaintiff, besides both vendors have executed a power of attorney dated 11.12.1995 and thereafter, entire sale consideration was paid on 27.12.1995. On the same day, they have also executed an additional sale agreement, in which sons and daughters signed as witness, in which it was specifically mentioned that the Vendor ceased the relationship with the schedule mentioned property. Thereafter, no time limit was fixed. So, the plaintiff is



in continuous possession and enjoyment of the property and he expressed his readiness and willingness to perform his part to get the sale deed, but the vendors/defendants shifted their residence and he is not able to trace them. Subsequently, he came to know in the year of 2017 that they have sold he property in favour of 2nd defendant Abdul Kapoor. So, the cause of action arose for the suits and hence, the suits were filed seeking for the relief of specific performance and to declare the sale deeds executed by vendors as null and void.

5. By relying the facts, the learned counsel for plaintiff would submit that the suit is not barred by limitation because the plaintiff is in possession of the property and his possession is protected under Sec.53-A of Transfer of Property Act. Furthermore, as per the recitals of sale agreement, the vendors admitted the execution of sale agreements with the plaintiff, but instead of executing the sale deed in his favour, they have created a sham and nominal document in favour of third party as such is invalid and the same is liable to be set aside. So, the plaintiff approached the court for the remedy, which is available for him under the statute and the same is not barred by limitation. Hence, he prayed to dismiss these Civil Revision



Petitions on merits.

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6. Heard and considered rival submissions made by learned counsel for Revision Petitioners as well as learned counsel for respondents and perused the records.

7. On considering both side submissions, the fact remains that the plaintiff approached the court seeking for the relief of specific performance against the defendants, who are husband and wife claiming that they have entered into two separate sale agreements in the year of December 1995. Subsequently, the entire sale consideration was paid and additional sale agreement was also executed, in which son and daughters have signed, besides, there is also a power of attorney executed in his favour and possession along with original title deed were handed over to him, but ignoring all the defence, the Vendors have sold the property to a third party viz., Abdul Kapoor. So, he approached the Court to get sale deed executed from the vendors/defendants and also prayed to declare the sale deed executed by them as null and void.

8. But, the contention of Vendors/Revision Petitioners is that the



terms of alleged sale agreement of the year 1995 has not been complied with and the contract was not performed by the plaintiff within a stipulated period and even within three years, they have not approached the court for proper remedy. Now, nearly about 23 years later, they have filed a suit, based on the alleged time barred sale agreement, as such is not maintainable and it is a clear case of abuse of process of law.

9. Admittedly, both parties have admitted the execution of sale agreement dated 11.12.1995 and subsequently, according to plaintiff, he has paid entire sale consideration and obtained a Power of Attorney from the vendors and their children also signed in additional sale agreement as if they have no objection to sell the property. These facts were strongly denied by the defendants/revision petitioners. Even on perusal of recitals of sale agreement, the defendants mentioned about the execution of sale agreement with the plaintiff, but they content that they are unable to trace out the plaintiff. So, nearly about 18 years later, in the year of 2005, they have executed a sale deed in favour of third party. Furthermore, the Vendors/Revision Petitioners have also contended that their original title deeds were lost and they gave a paper publication and on the other hand, the



C.R.P. Nos.1504, 1519 & 1738 of 2019

plaintiff received all the title deeds. So, the dispute between parties is a mixed question of law and facts and the same is to be established through oral and documentary evidence. Therefore, based on the allegations levelled each other, the proceedings cannot be held as abuse of process of law. The authorities relied on by the Revision Petitioners are not applicable to the facts of the present case. However, the remedy is available to the Revision Petitioners under Order VII Rule 11 of C.P.C. So, liberty is granted to the Revision Petitioners to approach the civil court to reject the plaint or else both parties shall get on with the trial. In such circumstances, the trial court is directed to complete the trial and dispose the case within a period of six months from the date of receipt of copy of this order. Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

18.08.2023

Index: Yes/No
Internet: Yes/No
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To
Principal District Judge, Chengalpattu.



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C.R.P. Nos.1504, 1519 & 1738 of 2019

T.V.THAMILSELVI, J.

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Pre-delivery common order in
C.R.P. Nos.1504, 1519
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