



C.R.P.No.1912 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.03.2023**

CORAM

THE HONOURABLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.No.1912 of 2021
and C.M.P.No.14828 of 2021

Selvam

... Petitioner

-VS-

G.Asokan

... Respondent

PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, pleaded to set aside the fair and decreetal orders dated 09.04.2021 passed in I.A.No.741 of 2017 in O.S.No.198 of 2012 on the file of the Sub Court, Ranipet and allow the said I.A.No.741 of 2017.

For Petitioner : Mr.P.Mani

For Respondent : Ms.S.Sriranjini for Mr.T.P.Prabakaran

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal orders dated 09.04.2021 passed in I.A.No.741 of 2017 in O.S.No.198 of 2012 on the file of the Sub Court, Ranipet and allow the said I.A.No.741 of 2017.



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2. The learned Counsel for the Revision Petitioner submitted his arguments. As per the submissions, the Revision Petitioner herein is the second Defendant in the Suit. The second Defendant in the Suit was impleaded in the year 2016, he is the purchaser of the property.

3. The suit was instituted by the Respondent against the vendor of the Revision Petitioner. The suit was filed for the relief of specific performance of contract for sale of the property. The learned Counsel for the Revision Petitioner invited the attention of this Court to the dates and events. The plaint for filing the Suit was presented before the Sub Court, Ranipet on 02.04.2008. It was returned for deficit court fee. The plaint was filed with Rs.90/- only. Therefore, it was returned granting one month time to pay the balance Court fee. It was complied without paying deficit court fee. Repeatedly, it was returned and complied without filing any petition seeking extension of time for payment of deficit court fee. After such repeated returns and compliances it was numbered on 20.10.2012 and numbered as O.S.No.198 of 2012. After filing of the suit, the Petitioner herein was impleaded as second Defendant on the ground that he had purchased the



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property. The petition to implead the second Defendant was filed in

I.A.No.219 of 2016. It is the contention of the learned Counsel for the Revision Petitioner that the sale agreement dated 01.10.2005 and three months time was granted for execution of sale deed. By the time the Suit was numbered three years period had already lapsed. Therefore, the subsequent purchaser who was impleaded as second Defendant had filed the petition in I.A.No.741 of 2017 under Order VII, Rule 11(c) of CPC. The Plaintiff had filed counter. After due enquiry, the learned Sub Judge, Ranipet, dismissed the petition in I.A.No.741 of 2017 filed under Order VII, Rule 11(c) of CPC by order dated 09.04.2021. Aggrieved by the same, the second Defendant in O.S.No.198 of 2012 had approached this Court under Article 227 of the Constitution of India seeking to set aside the order of dismissal of the petition in I.A.No.741 of 2017 and also to allow the petition under Order VII Rule 11(c) of CPC.

4. The learned Counsel for the Respondent / Plaintiff submitted that the order of the learned Sub Judge, Ranipet does not warrant any interference as the learned Sub Judge had dismissed the same stating that



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the limitation is a mixed question of fact and law. Therefore, it does not warrant any interference. The learned Counsel for the Respondent invited the attention of this Court to the counter filed by the Respondent herein as Respondent in I.A.No.741 of 2017 which reads as under:-

"This Hon'ble Court has already passed an order condoning the delay in payment of Court Fee as against which the Petitioner has not preferred any Appeal / Revision. Hence, the order passed by this Hon'ble Court has become final and binding on the parties. Therefore, the question of raising this issue at this stage does not arise at all."

He also invited the attention of this Court to the Order passed by the learned Sub Judge, Ranipet in paragraphs 8 and 9:

"8. The Respondent / Plaintiff has filed a suit for Specific Performance of Contract against the Petitioner and 1st Defendant. The Petitioner / 2nd Defendant has submitted that after lapse of 5 years he was added as a party to the suit and he is only a bona fide purchaser, hence the alleged agreement is not true and valid and binding on him in any manner. On the other hand, the Respondent has alleged that the Petitioner has been filed this petition only to drag on the proceedings. Who has cheated whom and who is responsible for the sale agreement and who is liable to execute the sale deed are all question of facts that can be decided only during the trial after both parties letting evidence. The next contention raised by the Petitioner to reject the plaint is that the suit filed by the Respondent / Plaintiffs is barred by limitation. It is settled law that the question of limitation is mixed question of law and fact and has to be decided during the trial."



9. The reasons stated by the Petitioner in his affidavit to reject the plaint does not attract the provisions contained in Order 7 Rule 11 of CPC. Under the above facts and circumstances the Petitioner failed to prove that the suit has to be rejected on the ground mentioned U/Or 7 R 11 CPC. Hence the petition has to be dismissed."

5. The learned Counsel for the Revision Petitioner also relied on the Rulings of this Court in ***S.V.Arjunaraja -vs- P.Vasantha [2005(5) CTC 401]*** it was a similar case of filing the suit after a period of limitation with deficit Court fee. The relevant portion is extracted below:-

"4.The Revision Petitioner/Defendant, after going through the presentation of the plaint in the Court, felt that the suit itself should not have been numbered, whereas it should have been rejected, as contemplated under Order 7, Rule 11(c) CPC. In this view, he has filed an application, in I.A.No.521 of 2003 in O.S.No.153 of 2003, to reject the plaint, contending that within the period of limitation for the suit, sufficient Court fees has not been paid, whereas, the Court fees has been paid after the period of limitation is over, which was also condoned, even without issuing notice to the Revision Petitioner/Defendant and in this view, the plaint should be rejected.

25. ... Therefore, as rightly contended by the learned Counsel for the Revision Petitioner/Plaintiff, the case on hand squarely comes under Order 7, Rule 11(c) CPC and therefore, the plaint should be rejected, as barred by limitation."

Therefore, the facts reported in the Judgment squarely applies to the facts of this Case. Therefore, the learned Counsel for the Revision Petitioner sought



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to set aside the order of dismissal of the I.A.No.741 of 2017 in O.S.No.198 of 2012 dated 09.04.2021 of the learned Sub Judge, Ranipet and allow this Civil Revision Petition.

6. *Points for Consideration:*

Whether the order passed by the learned Sub Judge, Ranipet dismissing the I.A.No.741 of 2017 in O.S.No.198 of 2012 dated 09.04.2021 is to be set aside by exercising the power of this Court under Article 227 of the Constitution of India?

7.Considering the rival submissions, the contentions of the learned Counsel for the Revision Petitioner is found acceptable. It is the contention of the learned Counsel for the Revision Petitioner that the plaint in the suit was filed with deficit court fees and repeatedly, it was returned and complied without paying the proper court fees and without extending the time for payment of sufficient court fees. As per the returns, without filing any petition by the Plaintiffs seeking extension of time under Section 149 of C.P.C. by the time the suit was numbered, the period of limitation for



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institution of the suit had already expired.

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8. After filing of the suit and after the expiry of limitation, it was numbered. After numbering of the suit, when the Defendants entered appearance and filed Written Statement, the subsequent purchaser was impleaded in the year 2016. By that time, the subsequent purchaser had put up construction and obtained service connection, obtained patta and other transfer of revenue records in his name. Therefore, the impleaded party/Revision Petitioner herein after entering appearance as Defendant No.2, verified the plaint and arrived at a conclusion that the suit numbered in the year 2012 was beyond the period of limitation as Court fees was not paid within the time by the plaintiff. Therefore, instead of numbering the suit, the plaint ought to have been rejected when it was repeatedly re-presented without complying the returns by paying proper Court fees under Order VII, Rule 11(c) of CPC which is extracted hereunder:

“11. Rejection of plaint.- *The plaint shall be rejected in the following cases:—*

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper



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within a time to be fixed by the Court, fails to do so;”

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9. Even though the plaint was presented on 02.04.2008, it was numbered in the year 2012 after four years that is the ground for rejecting the plaint. By the time it was numbered, it ought to have been rejected as the Plaintiff had not paid sufficient Court fee to institute the suit for specific performance of contract. Therefore, the claim that the plaintiff is ready and willing to perform his part of the contract is not true. Therefore, only to cause harassment to the Defendant, the suit had been instituted and numbered belatedly. By the time, the suit was numbered in the year 2012. The Defendant had already sold the property. The subsequent purchaser, who purchased the property, had put up construction and made mutation of his name in the revenue records. While so, no purpose will be served by filing the suit for specific performance in which the Plaintiff had not paid Court fees within time. In the suit for specific performance, repeatedly the suit had been returned for compliance and complied with without paying deficit court fees. Therefore, it is not a question of limitation alone but also deficit Court fee had not been complied even after repeated adjournments and repeated grant of time attracting Order VII, Rule 11 (c) of CPC.



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10.The Defendant, who was in need of money, had wanted to sell the property. The Plaintiff in the suit in O.S.No.198 of 2012, who was ready to purchase the property, had sought time for payment of entire sale consideration. Therefore, the sale agreement was entered into but after execution of sale agreement, the Plaintiff, who instituted the suit, did not show his *bona fide* as seen from the repeated returns and such conduct of the Plaintiff in not paying deficit Court fee from 2008 till 2012 cannot be treated leniently and allowed to misuse this forum of the Court. It is an abuse of process of Court to cause harassment to the Defendant in the suit. Such type of Plaintiff shall not be encouraged to misuse the forum of the Civil Court. Therefore, the impleading of the subsequent purchaser as second Defendant had resulted in the second Defendant losing his valuable right of protection of his property purchased through hard earned money. If the Petition is dismissed, he has to face the ordeal of the suit for no fault of his. Therefore, this Court has to necessarily interfere with the order of the learned Sub Judge, Ranipet, in dismissing I.A.No.741 of 2017 in O.S.No198 of 2012. Also, as rightly pointed out by the learned Counsel appearing for



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the Revision Petitioner, the Plaintiff in the suit had not filed any petition either under Section 148 of CPC seeking enlargement of time or under Section 149 of CPC to make up deficit court fee.

11.On those grounds, the submissions of the learned Counsel for the Revision Petitioner is found acceptable. In the facts and circumstances of this case, as is available from the records, the suit plaint filed in the year 2008 was numbered only in the year 2012 and the Petitioner herein was impleaded only in the year 2016 which is nothing but abuse of process of the Court by the Plaintiff who is the Respondent herein. Also, in the light of the ruling of this Court in the case of ***S.V.Arjunaraja -vs- P.Vasantha [2005(5) CTC 401]***, the submissions of the learned Counsel for the Petitioner is found acceptable. The facts of the reported ruling squarely applies to the facts of this case.

12.In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondent. The order passed by the learned Sub Judge, Ranipet dismissing I.A.No.741



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of 2017 in O.S.No.198 of 2012, dated 09.04.2021 is to be set aside.

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In the result, **this Civil Revision Petition is allowed.** The Order passed by the learned Sub Judge, Ranipet in I.A.No.741 of 2017 in O.S.No.198 of 2012, dated 09.04.2021 is set aside. The plaint in the suit in O.S.No.198 of 2012 is rejected under Order VII, Rule 11(c) of CPC. The learned Sub Judge, Ranipet, is directed to strike off the plaint from the file of his Court. No costs. Consequently, connected miscellaneous petition is closed.

24.03.2023

rna/srm

Index : Yes / No

Internet : Yes / No

To

The Sub Court,
Ranipet.

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