



CRP.No. 3243 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

CRP.No. 3243 of 2023
and
CMP No. 19986 of 2023

1.Muthulakshmi
2.Saravanan
3.Shanmugam
4.Neelakandan

... Petitioners

Versus

Kesavan

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decreetal order dated 07.07.2023 passed in IA.No. 2 of 2023 in O.S.No. 66 of 2022 on the file of the Additional District Munsif, Ulundurpet.

For Petitioners : Mr.M. Abbiraami



CRP.No. 3243 of 2023

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ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 07.07.2023 passed in IA.No. 2 of 2023 in O.S.No. 66 of 2022 on the file of the Additional District Munsif, Ulundurpet.

2. The brief facts of the case are that the respondent/plaintiff has filed a suit in O.S.No. 66 of 2022 on the file of the Additional District Munsif, Ulundurpet, for declaration and mandatory injunction against the petitioners/defendants. Pending the suit, the petitioners/defendants have filed an application in IA.No. 2 of 2023 under Order VII Rule 11(a) CPC seeking to reject the plaint. The trial Court dismissed the application after perusing the records by order dated 07.07.2023. Aggrieved by the same, the petitioners/defendants have filed the present Civil Revision Petition.

3. According to the petitioners, the respondent has executed a registered mortgage deed dated 25.10.1989 to and in favour of late.Govindan who is the husband of the first petitioner/defendant and father of the 2 to 4 petitioners/defendants. The suit was filed by the respondent after 32 years. Further, the respondent in the plaint pleaded that he had settled the mortgage



amount to the late.Govindan, but it is false the respondent has not settled any amount, if so, he could have received receipts towards the discharge of the liability. The suit filed by the respondent is barred by limitation. Hence, the petitioners prays to set aside the findings of the trial Court.

4. It is the contention of the respondent before the Court below that he paid the mortgage amount along with interest in the year 1994 April 2nd week. The petitioners have filed the present vexatious application to drag on the proceedings. Hence, the above Revision is liable to be dismissed.

5. Heard the learned counsel for the petitioner and perused the materials placed on record.

6. On a perusal of the impugned order dated 07.07.2023, the case of the petitioners/defendants is that the plaint does not disclose and the prayer sought by the respondent/plaintiff is barred by limitation. The respondent objected and argued that he has shown the proper cause of action, so the plaint is maintainable. As far as the application is concerned the petitioners have raised two grounds i.e., plaint is filed without cause of action and barred by limitation. Before getting into the above mentioned grounds, it is admitted by both sides,



that the respondent/plaintiff had executed a mortgage deed dated 25.10.1989.

The only dispute between the parties is with respect to the discharge of the mortgage amount.

7. The contention of the petitioners is that the respondent has not paid any mortgage amount. The contention of the respondent is that he had settled the entire mortgage amount. This is the question of fact, which can be decided only at the time of trial. So far as the question of limitation is concerned, in most of the cases, the limitation shall be the mixed question of fact which can be decided only based on the evidence to be adduced by the parties. In this case, the respondent has prayed to declare the mortgage deed as null and void and pleaded that on particular date, the respondent has issued notice to the petitioners for execution of discharge but the petitioners failed to do so, hence the suit has been filed by the respondent/plaintiff. Therefore, the suit was filed by the respondent/plaintiff is not barred by limitation. While that being the case, in respect of limitation is concerned, it is a mixed question of law and fact which can be decided in the original suit based on the both side evidence. Therefore, the petitioners stand that the prayer is barred by limitation is not sustainable. As far as the cause of action is concerned, cause of action is nothing but the material of facts which gives right to the respondent/plaintiff to



CRP.No. 3243 of 2023

institute a suit against the petitioners/defendants and hence, the ground is also not sustainable. The Court below has rightly dismissed the application and this Court also find no reason to interfere with the impugned order passed by the Court below.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.09.2023

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
MSM

To
1. The Additional District Munsif, Ulundurpet.
3. The Section Officer, V.R. Section,
High Court, Madras.



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CRP.No. 3243 of 2023

V.BHAVANI SUBBAROYAN, J.
MSM

CRP.No. 3243 of 2023



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CRP.No. 3243 of 2023

05.09.2023