



C.R.P.No.4070 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4070 of 2023

S.Natesan

... Petitioner

-Vs-

1. Rajendhiran

2. Nirmala

3. V.Venugopal

4. The Sub-Registrar,
Idappadi.

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order passed in unnumbered O.S.SR.No.4908 of 2023 dated 23.06.2023 on the file of Subordinate Court, Sankari by allowing this Civil Revision Petition.

For Petitioner

: Mr.R.Marudhachalamurthy



C.R.P.No.4070 of 2023

ORDER

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Challenging the impugned order of rejection passed in unnumbered O.S.SR.No.4908 of 2023 dated 23.06.2023 passed by Sub-Judge, Sankari, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner filed a suit to declare the sale deed of the year of 2016 executed by plaintiff in favour of 2nd defendant and also to declare the sale deed of the year of 2023 executed by the 2nd defendant in favour of 3rd defendant as null and void and other consequential relief. But the plaint was rejected by the trial judge stating that as per the plaint averments, nearly about 7 years after execution of earlier sale deed of the year 2016, he came forward with the present suit as such is totally barred by limitation and also no explanation was offered by the plaintiff how the suit is filed within time. Accordingly, the plaint was rejected on the ground of limitation. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.



C.R.P.No.4070 of 2023

4. The learned counsel for Revision Petitioner would submit that he filed a suit to declare the sale deed executed in favour of 2nd defendant as sham and nominal stating that there was some loan transaction between them and while he discharged the entire loan amount, he has taken steps to get back the documents by issuing notice in the year of 2023. However, he came to know that before that, the 2nd defendant executed the sale deed in favour of 3rd defendant in the instance of 1st defendant, which is a sham and nominal one. But, without considering his submissions, the trial judge rejected the plaint. Hence, he prayed to set aside the findings of trial judge.

5. Records perused. On perusal of records, it reveals that now the sale deed executed in favour of 3rd defendant on 09.02.2023. So, the cause of action arose for the suit recently, but the trial judge erroneously concludes that the suit is barred by limitation before numbering the plaint. Considering the fact that the plaintiff prays to declare the sale deed of the year 2023 and the cause of action arose from the year of 2016 or from the year of 2023 is a mixed question of law and facts. So, without adducing proper evidence by both parties, it cannot be decided that the suit is barred by limitation. However, without numbering the plaint itself, the trial judge



C.R.P.No.4070 of 2023

made an observation as such is erroneous one and the same is liable to be set aside. Furthermore, if opportunity is not given to the plaintiff, his valuable right to protect his property will be defeated. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in unnumbered suit in O.S.SR.No.4908 of 2023 is set aside. The trial judge is directed to take the plaint on file within a period of two weeks from the date of receipt of copy of this order and proceed with the case as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.11.2023

Index : Yes/No
Speaking Order : Yes/No
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To

The Sub-Judge, Sankari.



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C.R.P.No.4070 of 2023

T.V.THAMILSELVI, J.

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C.R.P.No.4070 of 2023

22.11.2023