



C.R.P(MD)No.598 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.598 of 2023

and

C.M.P(MD)No.2760 of 2023

P.Tamilselvam

... Petitioner/
3rd Defendant

Vs.

1.S.Kannan

2.A.Karuppanan

3.K.Kavitha

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to strike off the plaint in O.S.No.118 of 2019 on the file of the subordinate Judge, Thuraiyur.

For Petitioner : Mr.K.Mahendran

ORDER

The present civil revision petition has been filed to strike off the plaint in O.S.No.118 of 2019 on the file of the Subordinate Judge, Thuraiyur.



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2. The petitioner is the third defendant in O.S.No.118 of 2019 before the Sub Judge, Thuraiyur. The said suit was filed by the first respondent to cancel sale deed, dated 23.03.2016 registered as Document No.1708 of 2016 and sale deed, dated 22.03.2018 registered Document No.1080 of 2019. It is submitted that first sale having been concluded on 23.03.2016 vide registered Document No.1708 of 2016, the suit filed to cancel the sale deeds barred under Section 54 of the Transfer of Property Act.

3. The facts on record indicate that the petitioner had also filed written statement in O.S.No.118 of 2019 on 20.01.2020. No doubt, the suit can be dismissed on account of limitation, however limitation is a mixed question of law and fact and therefore, the suit instituted by the first respondent cannot be straight away scuttled by invoking Article 227 of the Constitution of India. The petitioner has an alternate remedy to file a petition under Order 7 Rule 11 of Civil Procedure Code to reject the plaint before the Trial Court.



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4. It was open for the petitioner to have filed appropriate application under Order 7 Rule 11 of Civil Procedure Code to reject the plaint. However failed to exercise, the option Order 7 Rule 11 of Civil Procedure Code to reject the plaint, the petitioner cannot scuttle the suit after filing a written statement before the trial Court. The trial Court shall therefore endeavour to dispose of the suit preferably within a period of 12 months from the date of receipt of copy of this order. The issue relating to limitation is left to be canvassed by the petitioner in the suit as a preliminary issue.

5. This Civil Revision Petition stands dismissed with the above observations. No costs. consequently, connected miscellaneous petition is closed.

06.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The subordinate Judge, Thuraiyur.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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