



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.06.2023**

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1504 of 2023

and

C.M.P.(MD)No.7388 of 2023

Nallini

...Petitioner

Vs.

Jesuit Madurai Province,
Represented by its Province,
Treasurer having its Registered Office
at Madhuralaya,
Beschi College,
Dindigul.

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records resulting in the impugned fair and decreetal order passed in I.A.No.3 of 2022 in O.S.No.138 of 2021 dated 22.02.2023 on the file of the Additional Sub ordinate Judge, Dindigul and set aside the same as illegal.

For Petitioner

: Mr.C.Sundaravadivel

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the order passed in I.A.No.3 of 2022 in O.S.No.138 of 2021 dated 22.02.2023 on the file of the Additional Sub ordinate Judge, Dindigul.

2.The Operative portion of the impugned order reads as under:-

“Since the question of limitation is the mixed question to be



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decided through the facts and the law. Therefore the aspect in respect of the limitation has to be decided only after framing necessary issues and by permitting the both side to adduce the oral and documentary evidence. Further the question of cause of action is also to be decided only after the oral and documentary evidence. Further the specific question in respect of whether the suit is maintainable without relief of declaration of sale deeds. This Court finds that the above said question has to be answered by this Court only after the full fledged trial. Therefore without recording the evidence both in oral and documentary the question mentioned in this petition cannot be decided. Further the petitioner has not stated the reason to reject as contemplated under Order 7 Rule 11 CPC. Further in respect of the limitation the learned advocate appearing for the petitioner would argue that since the sale deed in question has been executed on 24.07.2002 and the suit has been filed in the year 2021 after the lapse of 10 years. Hence, the suit is barred by limitation. But the respondent has mentioned the circumstances for filing this suit even before filing the suit there was an understanding between the plaintiff and the defendants 1 and 2 I.e. the 2nd defendant on behalf of the 1st defendant with the plaintiff have made an memorandum understanding on 26.11.2018. Therefore, this Court feels that whether there was any understanding between the plaintiff and the defendants the same has to be confirmed only after the trial. Further on reading the judgments relied on the learned advocate appearing for the respondent stated supra. The Hon'ble High Court of Madras in three judgments have clearly stated that the facts to be determined only at the time of trial. Since the question of limitation is mixed with facts and law. Therefore, this Court is not in a position to accept the contention made in the petition and as such this petition is not maintainable.”



3.The petitioner filed I.A.No.3 of 2021 under Order 7 Rule 11(a) of CPC. By the impugned order, the Court has dismissed the application filed by the petitioner by following well settled principles of law.

4.The petitioner is the first defendant in O.S.No.138 of 2021. The above suit has been filed by the respondent for following relief:-

“It is therefore prayed that this Hon'ble may be graciously pleased to pass a decree.

(a)Declaring that the suit property belongs to the plaintiff Society and consequential relief of

(b)Permanent injunction restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the plaintiff Society over the suit property,

(c)granting permanent injunction restraining the third defendant not to register any deed executed by the first defendant in favour of third parties in respect of the suit properties.

(d)directing the defendants 1 and 2 to pay the costs of the suit and

(e)granting such other reliefs to the plaintiff under the circumstances of the case and thus render justice.”

5.The attempt of the respondent/plaintiff is to declare the sale deed executed by the respondent plaintiff on 24.07.2002 is sought to be set it knot in the year 2021, by filing the above suit. Limitation is always a mixed question of law and fact.



Therefore, the plaint cannot be rejected under Order 7 Rule 11(a) of CPC.

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6.I have perused the impugned order and the plaint filed by the respondent and the affidavit filed by the petitioner in support of the above application. Although the petitioner may have case to succeed before the trial Court, a suit cannot be dismissed or plaint rejected at an interlocutory stage based on the averments in the affidavit as it has been repeatedly held the limitation is a mixed question of fact and law. The cause of action in the plaint would indicate that the respondent has made out the case for the suit although whether the respondent is indeed entitled for relief or not is for the Court to conclude whether to allow the suit or dismiss the suit after trial and final arguments.

7.I do not find any reasons to interfere with the impugned order. Considering the fact that the dispute is pertains to a sale deed in favour of the petitioner as it was executed as early as 24.07.2002, the learned Additional Sub Judge, Dindigul shall endeavour to dispose of the suit as expeditious as possible within a period of 12 months from the date of receipt of a copy of this order. The petitioner shall file written statement, if the written statement has not filed within a period of 30 days thereafter.



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8.In view of the above, the civil revision petition stands dismissed. No Costs.

Consequently, connected miscellaneous petition is closed.

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

To

1.The Additional Sub ordinate Judge, Dindigul.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

Mrn

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30.06.2023