



C.R.P.(MD)No.673 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 10.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.673 of 2018

and

C.M.P.(MD)No.2931 of 2018

B.Hilda Helena

... Revision Petitioner/ Petitioner/

Defendant

Vs.

1.P.Chelladurai

2.D.Senthil Kumar

... Respondents/Respondents/Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 28.11.2017, passed in I.A.No.228 of 2015, in O.S.No.51 of 2014, on the file of the District Munsif cum Judicial Magistrate, Kodaikanal, Dindigul District by allowing this Revision Petition.

For Petitioner : Mr.I.Sam Jegan

For Respondents : Mr.S.Srinivasa Raghavan



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ORDER

The instant Civil Revision Petition has been filed, against the order, dated 28.11.2017, passed in I.A.No.228 of 2015, in O.S.No.51 of 2014, on the file of the District Munsif cum Judicial Magistrate, Kodaikanal, Dindigul District.

2. The revision petitioner is the first defendant before the trial Court. It appears that the plaintiff has filed the suit for permanent injunction, based upon the sale agreement, dated 18.08.2007, without seeking the comprehensive relief of specific performance. Therefore, the first defendant has filed an application under Order 7 Rule 11 C.P.C. raising a ground that when the petitioner is having a comprehensive relief of specific performance, mere filing a suit for bare injunction is hit by the principle of Order 2 Rule 2 C.P.C. Further, the very suit was filed in the year 2014, though the agreement is of the year 18.08.2007. Therefore, according to the petitioner, the suit is barred by limitation.



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3. The respondents / plaintiffs have filed a counter statement stating that the ground of limitation is a mixed question of law, and that the other ground raised by the petitioner / first defendant will not come under Order 7 Rule 11 C.P.C. Therefore, he prayed for dismissal.

4. After hearing both sides, the trial Judge, has found that the very bar contained in Order 2 Rule 2 C.P.C. is not attracted and ultimately dismissed the application.

5. I have given my anxious consideration to the either side submission and perused the records.

6. On perusal of the records, this Court finds that the agreement, is dated 18.08.2007. The learned counsel for the petitioner / first defendant would fairly concede that the agreement did not stipulate any time for parties for performance. Therefore, the learned counsel for the respondents would submit that the question of limitation cannot be decided under Order 7 Rule 11 C.P.C. application. On perusal of the agreement, which has been submitted before this Court by way of additional typed set, no time was



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determined for performance. Therefore, as submitted by the learned counsel for the respondents / plaintiffs, the limitation could not be decided in Order 7 Rule 11 C.P.C application as the same is a mixed question of law, and the same can be only decided by way of trial. Apart from that the very ground raised by the petitioner / first defendant, Order 2 Rule 2 C.P.C. also can not be taken in the present suit. As the instant suit is the first suit filed for a relief of permanent injunction.

7. Therefore, this Court does not find any merit in this Civil Revision Petition. The order passed by the trial Court does not require any interference of this Court. Hence, the instant Civil Revision Petition is **dismissed.**

8. However, the revision petitioner has given liberty to take all the defence raised in this application before the trial Court and the trial Court is directed to consider the objection of the defendant, without being influenced by the order of this Court.



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9. At this juncture, both side counsel seeks indulgence of this Court for earlier disposal of the suit. Considering the suit of the year 2014, the learned trial Judge is directed to complete the trial as expeditiously as possible and both the parties are directed to co-operate with the trial. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

10.07.2023

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

To

1. The District Munsif cum Judicial Magistrate,
Kodaikanal, Dindigul District.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

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