



C.R.P.(MD).No.2711 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2711 of 2018

A.P.M Nagarajan

... Petitioner/Petitioner/2nd Defendant

-VS-

1. AL.Dhamayanthi

2. R.Renganathan

... Respondents/Respondents/
Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order in I.A.No.134 of 2018 in O.S.No.51 of 2017, dated 31.08.2018 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

For Petitioner : Mr.N.Balakrishnan

For Respondents : Mr.G.Sridharan

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order in I.A.No.134 of 2018 in O.S.No.51 of 2017, dated 31.08.2018 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.



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2. The petitioner herein is the petitioner/2nd defendant and the respondents herein are the respondents/plaintiffs before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The learned counsel appearing for the petitioner/2nd defendant would submit that the respondents/plaintiffs has filed the suit for specific performance based upon the sale agreement dated 27.11.1987. The said suit was resisted by the petitioner/2nd defendant. He further submit that while so, they moved an application under Order VII Rule 11 of C.P.C on the ground that the suit was barred under law of limitation. Because the suit has been filed beyond the period of three years.

5. Per contra, the learned counsel appearing for the respondents would submit that by referring the plaint averment the very ground raised by the petitioner is not emerging and that the ground raised by the petitioner will not come within the frame under Order VII Rule 11 of C.P.C.



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6. This Court has given anxious consideration to the submissions of the learned counsel on either side.

7. The one and only submission made by the learned counsel for the petitioner, as stated in paragraph No.5 of their affidavit, is that the father of the plaintiffs died during the year 1994, and even after death of the plaintiffs' father, the suit was instituted after 30 years. Therefore, the suit is barred by limitation.

8. It is settled principle of law that, while deciding an application under Order VII Rule 11 of C.P.C, the Court relies on only the plaint averments and not beyond that. It is also pertinent to mention here that in respect of the limitation for the claim of specific performance, the limitation commences only when the vendor refuses to part with the property. In the plaint, the respondents/plaintiffs has referred only the evasion and also the promise of the defendants to execute the sale deed. However, they would only mention that the second defendant had postponed the execution. From the harmonious reading of the plaint, this Court could not find any breaking point of refusal



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so as to commence the limitation. The mere delay of filing the suit for specific performance cannot be a ground to reject the plaint. Further the limitation should not be calculated from the date of the sale agreement.

9. Therefore, this Court could not find any ground so as to bring out a case of the petitioner that the suit is barred by limitation. The learned trial Judge has considered all the aspects elaborately and ultimately, rightly found that the application for rejection of plaint is not maintainable. From the submission of the learned counsel for the petitioner, this Court could not find any material so as to interfere with the orders of the Court below.

10. In the result, this Civil Revision Petition is **dismissed**. There shall be no order as to costs.

09.08.2023

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

1. The District Munsif cum Judicial Magistrate,
Thirumayam.



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C.KUMARAPPAN,J.

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