



CRP(MD).No.2726 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2018

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THE HON'BLE MR.JUSTICE **C.KUMARAPPAN**

CRP(NPD)(MD).No. 2726 of 2018 and
CMP(MD).No.11945 of 2018

Lourdhumary

Petitioner

Vs.

Srivathsan

Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 21.06.2018 passed in I.A.No.520 of 2017 in O.S.No.1220 of 2015 on the file of the II Additional District Munsif Court, Thiruchirappalli.

For Petitioner : Mr.R. Paranjothi

For Respondent : Mr.C. Meenakshi Rama Prabhu



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ORDER

This Civil Revision Petition has been filed against the fair and decretal order, dated 21.06.2018 made in I.A.No.520 of 2017 in O.S.No. 1220 of 2015 on the file of the II Additional District Munsif Court, Thiruchirappalli.

2. The revision petitioner herein is the petitioner / 2nd defendant before the Court below. The respondent herein is the respondent, respondent / plaintiff before the Court below.

3. The respondent / plaintiff has filed a suit for the relief of declaration to declare the sale agreement, dated 10.04.1996 as null and void and for the relief of permanent injunction. Now, the revision petitioner / defendant has filed an application under Order 7 Rule 11(d) CPC on the ground that the said suit is barred under law, as the plaintiff has come forward with an application to set aside the sale deed after a period of 19 years. Hence, the revision petitioner / defendant prayed to reject the plaint.



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4. Per contra, the learned counsel appearing for the respondent / plaintiff would submit that, according to the plaint averments they came to know about the alleged fraud only during 2015, and the suit is filed within three years from the date of knowledge. Therefore, the contention of the revision petitioner / defendant cannot be agitated under Order 7 Rule 11 CPC. The Court below after considering the submissions made by the learned counsel appearing on either side, ultimately, rejected the application filed by the revision petitioner / defendant under Order 7 Rule 11(d) CPC.

5. I have given my anxious consideration of the submissions of the learned counsel appearing on either side and perused the materials available on record.

6. From the submission of the learned counsel for the revision petitioner / 2nd defendant, the only ground raised for rejection of plaint is the question of limitation. According to the revision petitioner, the alleged sale agreement is dated, 10.04.1996, and when the plaintiff sought for the relief of declaration to declare the same as null and void, the period of three years was over. Hence, would contend that, since the application was



filed after a period of 19 years, the same is barred by limitation.

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7. At this juncture, it is pertinent to mention here that whenever the application is considered under Order 7 Rule 11 CPC, the Court would only see the plaint averments and not other external documents or evidences. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court reported in **2023 (3) MLJ 200 (Prem Kishore Vs. Brahim Prakash)**, wherein at Para 33 it has been held as follows:

“33. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) of the CPC can be summarized as follows:-

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the ‘previous suit’ is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the



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subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused."

8. Keeping in mind with the above ratio, if we look at plaint in paragraph No.6, it has been referred that the plaintiff came to know about the alleged sale agreement, dated 10.04.1996 only during 2015 when they took encumbrance certificate. The encumbrance certificate, is filed along with the plaint, as documents. Therefore, as per the plaint averments the plaintiff came to know about the sale agreement only during 2015. From the date of knowledge, the suit was filed within three years. Thus, the allegation put forth by the learned counsel for the petitioner could not be elucidated within the pleadings of the plaint, and the same could only be found from the written settlement filed by the defendant. It is common knowledge, the Court while considering Order 7 Rule 11 CPC application cannot go into pleadings of the defendant, as it is beyond the frame work of order 7 Rule 11 CPC. Hence, there is no scope for interference of the well considered order of the learned trial Judge.



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9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

10. However, the learned counsel for the petitioner would urge this Court to direct the Court below to frame an issue in respect of the limitation. I am confident that the Court below by the time would have framed the issues in respect of the limitation. If not framed so far, the Court below is directed to frame the issue on the point of limitation.

16.08.2023

Index : Yes / No
Internet : Yes / No
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To

The II Additional District Munsif Court, Thiruchirappalli.



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